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JOHNS HOPKINS UNIVERSITY STUDIES
IN
HISTORICAL AND POLITICAL SCIENCE

HERBERT B. ADAMS, Editor

History is past Politics and Politics present History.—*Freeman*

VOLUME III

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I

MARYLAND'S INFLUENCE

UPON

LAND CESSIONS

TO THE

UNITED STATES

"The vacant lands are a favorite object to Maryland."—*James Madison, on the plan for a general revenue*, 1783.

"There is nothing which binds one country or one State to another but interest."—*George Washington, on the Potomac Company*, 1785.

"There is no truth more thoroughly established, than that there exists in the economy and course of nature an indissoluble union between virtue and happiness, between duty and advantage, between the genuine maxims of an honest and magnanimous policy, and the solid rewards of public prosperity and felicity."—*Washington, Inaugural Address*, 1789.

JOHNS HOPKINS UNIVERSITY STUDIES
IN
HISTORICAL AND POLITICAL SCIENCE

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THIRD SERIES

I

MARYLAND'S INFLUENCE

UPON

LAND CESSIONS TO THE UNITED STATES

With Minor Papers on George Washington's Interest in Western Lands, the Potomac Company, and a National University

BY HERBERT B. ADAMS, Ph. D.

BALTIMORE
N. MURRAY, PUBLICATION AGENT, JOHNS HOPKINS UNIVERSITY
JANUARY, 1885

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INTRODUCTION.

This paper was first printed by the Maryland Historical Society in 1877, (Fund Publication, No. 11), under the title "Maryland's Influence in Founding a National Commonwealth." It is here published in a somewhat revised form, for the sake of advancing the lines of institutional study at the Johns Hopkins University, and at the same time promoting the cause of American Economic History.

The author would call attention to the territorial foundations of the American Union and point out the fact that our Public Lands stand in the same fundamental relation to our National Commonwealth as did Common Lands to the Village Republics of New England. The Great West was the *Folkland* of the United States; it bound them together by economic interests when they would otherwise have fallen apart after the Revolution. To trace out the further constitutional influence of our Public Lands upon the development of these States, which have increased and multiplied within the national domain as did New England Parishes within the original limits of one Town,—this would be a contribution indeed to American Institutional History.

The planting of English Institutions in each of those Western States and Territories is a story not yet told. The agrarian and general economic history has hardly been touched. For the coming student there are questions of the deepest interest respecting the disposition already made of Public Lands, both State and National. George W. Knight, Ph. D., of the University of Michigan, prepared for his Doctor's thesis a most valuable monograph upon "Federal Land Grants to Education in the Northwest Territory," an abstract of which was presented at the first meeting of the American Historical Association, by Professor Charles Kendall Adams, and which is to be printed in full in the Proceedings of the Association, First Series, III. A similar research upon Land Grants to Settlers in the Western States, has been undertaken by Shosuki Sato, who is specially commissioned for that work by the Japanese Government, and who is now prosecuting his agrarian studies at the Johns Hopkins University. Land Grants to Railroads should also be investigated as a chapter in the History of American Politics as well as of American Economics (if the latter term can be used in this connection). But the influence of Railroads upon immigration and transportation, upon state, and municipal life, opens

into still more attractive fields. There seems to be no limit to the economic and institutional interests connected with the disposal of our Western Territory.

But there are vast questions lying back of the disposal and settlement of our Public Lands; there are yet to be studied in minute detail the records of national and colonial acquisition of territory; the conflicting claims of states and nations; crown lands; royal provinces; chartered colonies; Indian lands; Indian, English, Dutch, and French land-tenure; agrarian survivals, etc. There are sub-strata of economic history and historical geography in each one of these United States. To some of the very oldest forms of fossil land-tenure renewed attention will be called in a paper on "The Land System of the New England Colonies," by Melville Eggleston, Esq. The Land System of Virginia, and the Dutch Village Communities upon Hudson River are also to be treated in these Studies. Canadian Feudalism will be investigated; other topics of an agrarian and institutional character will doubtless suggest themselves to other students.

MARYLAND'S INFLUENCE

UPON

Land Cessions to the United States.

THE claims of England to the lands immediately west of the Alleghany mountains and to the region north-west of the Ohio river, were successfully vindicated in the French and Indian War. By the treaty of Paris, in 1763, the English became the acknowledged masters, not only of the disputed lands back of their settlements, but of Canada and of the entire Western country as far as the Mississippi river. This was the first curtailment of Louisiana, that vast inland region, over which France had extended her claims by virtue of explorations from Canada to the Gulf of Mexico. Although now restricted by the treaty of Paris to the comparatively unknown territory beyond the Mississippi, Louisiana was destined to undergo still further diminution, and, like Virginia, which was once a geographical term for half a continent, to become finally a state of definite limits and historic character. Ceded by France to Spain, at the close of the above-mentioned war, in compensation for losses sustained by the latter in aiding France against England, and ceded back again to France in 1800, through the influence of Napoleon, these lands beyond the Mississippi were purchased by our Govern-

ment of the First Consul in 1803, and out of the south-eastern portion of the so-called "Louisiana Purchase," that State[1] was created, in 1812, which perpetuates the name of Louis XIV., as Virginia does the fame of a virgin queen.

But it is not with Louisiana or the Louisiana Purchase that we are especially concerned in this paper. We have to do with a still earlier accession of national territory, with those lands which were separated from French dominion by conquest and by the treaty of Paris, and, more especially, with that triangular region east of the Mississippi, south of the Great Lakes, and northwest of the Ohio, for here, as we shall see, was established the first territorial commonwealth of the old Confederation, and that too through the effective influence and far-sighted policy of Maryland in opposing the grasping land claims of Virginia and three of the Northern States. The history of the cession of those public lands which are best known to Americans as the Northwest Territory, and the constitutional importance of that cession as a basis of permanent union for thirteen loosely confederated States, and as a field for republican expansion under the sovereign control of Congress, may be presented under three general heads:

1. The land claims of Virginia, Massachusetts, Connecticut, and New York.

2. The influence of Maryland in securing a general cession of western territory for the public good.

3. The origin of our territorial government and national sovereignty.

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[1] One of the results of French dominion in this country is Louisiana, with its French inheritance of Roman Law. Having passed of late years through many corrupt phases of government, it was perhaps an historic necessity that she revived the Roman theory of sovereignty, as did Louis XIV., by the aid of his court-lawyers, and re-asserted *la puissance souveraine d'une république* and *l'état c'est moi*, in the form of an enlightened absolutism of its sovereign people.

I. The Land Claims.

Having indicated the historic place and territorial situation of the western lands in question, we shall now turn to the specific claims of Virginia, Massachusetts, Connecticut, and New York, the only States, which after the separation of the colonies from the mother country, had any legal title to lands north-west of the Ohio.

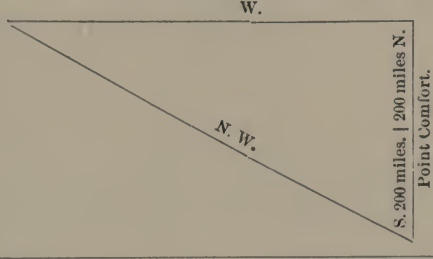
The charter granted by James I. to South Virginia, in 1609, was the most comprehensive of all the colonial charters, for it embraced the entire north-west of North America and, within certain limits, all the islands along the coast of the South Sea or Pacific Ocean. It is not very surprising that the ideas and language of the privy council should have been somewhat hazy as to the exact whereabouts of the South Sea, for Stith,[1] one of the early historians of Virginia, tells us that in 1608, when the London Company were soliciting their patent, an expedition was organized under Captain Newport to sail up the James river and find a passage to the South Sea. Captain John Smith also was once commissioned to seek a new route to China by ascending the Chickahominy. This charter of 1609 is the only one which we shall cite in this paper, for it was especially against the enormous claims of Virginia that Maryland raised so just and effective a protest. The following is the grant:

"All those lands, countries and territories situate, lying and being in that part of America called Virginia, from the point of land called Cape or Point Comfort, all along the sea-coast to the northward two hundred miles and from the said Point or Cape Comfort, all along the sea-coast to the southward two hundred miles; and all that space and circuit of land lying from the sea-coast of the precinct aforesaid, up into the land throughout, from sea to sea, west and north-west; and

[1] Stith's History of the first discovery and settlement of Virginia. Reprinted for Joseph Sabin, 1865, p. 77.

also all the islands lying within one hundred miles along the coast of both seas of the precinct aforesaid."[1]

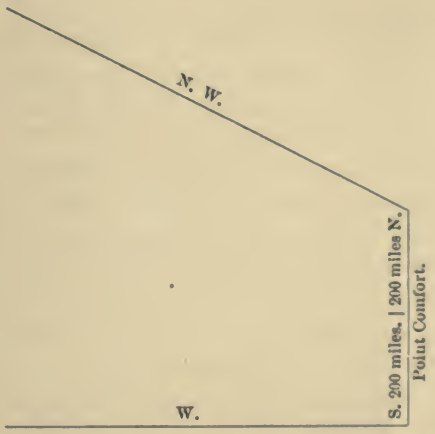
The extraordinary ambiguity of this grant of 1609, which was always appealed to as a legal title by Virginia, was first shown by Thomas Paine, the great publicist of the American and French Revolutions, in a pamphlet called "Public Good,"[2] written in 1780, and containing, as the author says upon his title-page, "an investigation of the claims of Virginia to the vacant western territory, and of the right of the United States to the same; with some outlines of a plan for laying out a new State, to be applied as a fund, for carrying on the war, or redeeming the national debt." Paine shows how the words of the charter of 1609 could be interpreted in different ways; for example, the words "all along the sea-coast" might signify a straight line or the indented line of the coast. The chief ambiguity, however, lay in the interpretation of the words "up into the land throughout, from sea to sea, west and north-west." From which point was the north-west line to be drawn, from the point on the sea-coast two hundred miles above, or from the point two hundred miles below Cape Comfort? The charter does not state distinctly. The logical order of terms would imply that the lower point below Cape Comfort, should be taken as the starting point for the north-western line. In that case, Virginia would have a triangular boundary and a definite area something larger than Pennsylvania.



[1] Laws of the United States respecting the Public Lands, (Washington, 1828,) p. 81. See also Federal and State Constitutions, Colonial Charters, etc., Part II., p. 1897. (Poore's ed., 1877).

[2] Works of Thomas Paine, I., p. 267.

The more favorable interpretation for Virginia and, perhaps, in view of the expression "from sea to sea," more natural interpretation, was to draw the north-western line from the point on the sea-coast two hundred miles above Point Comfort and the western line from the southern limit below Point Comfort. This gave Virginia the greater part, at least, of the entire north-west, for the lines diverged continually, thus:



In 1624, the London Company was dissolved, and Virginia became a loyal province, the Governor being appointed by the King, but the people elected a House of Burgesses. No alteration appears to have been made at that time in the boundaries established by the charter of 1609, but the northern limits of Virginia were afterwards curtailed by grants to Lord Baltimore and William Penn, and the southern limits by a grant to the proprietors of Carolina.[1] From a letter

[1] The charter of Maryland was granted in 1632, and may be found in Bacon's Laws of Maryland at Large, or in Hazard, I., pp. 327–36. The charter of Pennsylvania bears the date of 1681, and is contained in Proud's History of Pennsylvania, I., pp. 171–87. The original charter of Carolina, (1663,) for which Locke's famous constitution was written, is said to have been copied from the charter of Maryland. See Lucas' Charters of the Old

of Edmund Burke to the General Assembly of New York, for which province he was employed as agent, it is clear that, in questions concerning the boundary of royal provinces, it was the uniform doctrine and practice of the Lords Commissioners for Trade and Plantations, to regard "no rule but the king's will."[1] A royal proclamation was issued in 1763, prohibiting colonial governors from granting patents for land beyond the sources of any of the rivers which flow into the Atlantic ocean from the west or northwest.[2] Washington regarded this proclamation as a temporary expedient for quieting the minds of the Indians, and he proceeded therefore, with the greatest tranquillity, to seek out and survey good lands for future speculation.[3]

But efforts were being made to establish a new colony back of Virginia. The so-called "Ohio Company" had been founded as early as 1748, by Thomas Lee, Lawrence Washington, Augustine Washington and others, for the colonization of the western country.[4] A grant had been obtained, from the crown, of five hundred thousand acres of land in the region of the Ohio, and the efforts of this company to open up a road into the western valleys precipitated the French and Indian war. Probably the proclamation of 1763 was partly designed to pacify the Indians by reserving for their use, under the sovereign protection of England, the lands back of the Alleghanies and beyond the Ohio, but schemes for a new

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English Colonies, London, 1850, p. 97. See also Poore's ed. of Constitutions, Charters, etc.

[1] Burke's letter, which is most interesting for its exposition of the Quebec Bill of 1774, annexing to Canada the country north-west of the Ohio, was first published in the New York Historical Society Collections, 2d Series, II., pp. 219–25.

[2] This proclamation is to be found in the Land Laws of the United States, pp. 84–88, or in Franklin's Works, IV., p. 374, at the conclusion of his famous paper on "Ohio Settlement."

[3] See letter to Crawford, September 21, 1767. Sparks' Life and Writings of Washington, II., p. 346.

[4] Sparks' Life and Writings of Washington, II., p. 479.

government in that region were being discussed in England as well as in America.[1]

In 1766, Benjamin Franklin[2] was laying plans for a second great land company, which was finally organized and called the Vandalia or Walpole Company. It was composed of thirty-two Americans and two Londoners. Benjamin Franklin was really the moving spirit in the enterprise, but he persuaded Thomas Walpole, a London banker of eminence, to serve as the figure-head. The company petitioned, in 1769, for a grant of two and a half million acres of western land lying between the thirty-eighth and forty-second parallels of latitude and to the east of the river Scioto. Franklin was in London and labored hard with Cabinet officers and the Board of Trade for the success of Walpole's petition. It was urged that the company offered more for this grant than the whole region back of the mountains had cost the British Government, at the treaty of Fort Stanwix with the Indians, in 1768. The claims of the Ohio Company were also merged in this new scheme, but the report thereon was long delayed through the influence of Lord Hillsborough. A "new colony back of Virginia" was much talked of, however, about the year 1770. Lord Hillsborough himself had some correspondence that year with the Governor of Virginia on this subject.[3] From a letter of George Washington to Lord Botetourt, and from subsequent correspondence between Washington and Lord Dunmore, Botetourt's successor as Governor of Virginia, it is perfectly clear that a new and independent colony was in prospect back of the Alleghanies.[4]

Indeed, a rival scheme, under the name of the Mississippi Company, seems to have been organized by gentlemen of Vir-

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[1] A pamphlet was published in London, in 1763, entitled "The Advantages of a settlement upon the Ohio in North America."

[2] Works of Franklin, IV., p. 233.

[3] See Works of Thomas Paine, I., 290.

[4] Writings of Washington, II., pp. 356, 360.

ginia, among whom Francis Lightfoot Lee, Richard Henry Lee, Arthur Lee, and George Washington were conspicuous, but their petition, in 1769, for two and a half million acres of back land was never heard from after it had been referred to the Board of Trade.[1] Walpole's petition, however, after a delay of three years, was, through the influence of Lord Hillsborough, unfavorably reported. Franklin immediately prepared an answer, which is said to be "one of the ablest tracts he ever penned,"[2] and in which he so utterly refuted the arguments of Lord Hillsborough that Walpole's petition was finally granted by the Crown, August 14, 1772. Lord Hillsborough was so mortified that he resigned his position as Cabinet Minister and President of the Board of Trade.

In the Washington-Crawford correspondence, from 1772 to 1774, there are several allusions to the prospect of a "new government on the Ohio."[3] Washington, in a letter dated September 25, 1773, desires to secure ten thousand acres of land as near as possible to "the western bounds of the new colony,"[4] that is, just beyond the Scioto, and, in a Baltimore newspaper of that year, he advertises for sale twenty thousand acres of land on the Great Kanawha and Ohio rivers, observing that "if the scheme for establishing a new government on the Ohio, in the manner talked of, should ever be effected, these must be among the most valuable lands in it."[5] It was confidently expected, after the treaty between the Crown of Great Britain and the Indians, in 1768, at Fort

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[1] See Plain Facts, Philadelphia, 1781, p. 69.

[2] Sparks' Life and Writings of Washington, II., p. 485. Franklin's paper, which is entitled "Ohio Settlement," may be found in his Works, IV., pp. 324–374.

[3] The Washington-Crawford Letters concerning Western Lands. Edited by C. W. Butterfield,(Cincinnati, Robert Clarke & Co., 1877,) pp. 25, 30, 35.

[4] Washington-Crawford Letters, p. 30. See also Washington's letter to Dunmore, November 2, 1773. Washington's Writings, II., p. 378.

[5] Maryland Journal and the Baltimore Advertiser, August 20, 1773. A fac-simile of this number was reprinted in 1876, by the Baltimore American.

Stanwix, that the lines of the colonies would be re-extended beyond the Alleghany mountains, or, in other words, that the limits imposed by the royal proclamation of 1763 would fall, but there is no evidence that this expectation was ever realized by any act of the King in council. It was rumored, indeed, at various times after Walpole's Grant had been secured, that "the new government on the Ohio" had fallen through and that Virginia was authorized to re-assert her ancient charter boundaries, but these rumors appear to have been false. The legal title of the Walpole Company was not, indeed, fully perfected when revolutionary troubles broke out, but it is evident from a report in the Journals of Congress on the claims of this company, generally known as the Vandalia, that the King and council had really agreed to erect the region back of Virginia into a separate colony, and that the agreement was completed all but affixing the seals and passing certain forms of office. While it was held, in the above report, that the allowance to a single company of such immense land claims, was incompatible with the interests and policy of the United States, it was recommended that the American members of the Vandalia be re-imbursed by Congress in distinct and separate land grants, for their share in the purchase of the above tract.[1]

The consideration with which the claims of the Vandalia are treated in this report, which dismisses so summarily the pretensions of the Illinois and Wabash Companies, shows conclusively that there was some essence of right and legality in the original Walpole Grant. At all events, it was recognized before the Revolution as taking the precedence of Virginia's claim to jurisdiction over the lands west of the Alleghanies. Lord Dunmore, in the summer of 1773, promised Washington's land agent to grant certain patents on the Ohio *in case the new government did not take place*,[2] and

[1] Journals of Congress, IV., p. 23.

[2] Washington-Crawford Letters, p. 35.

in the fall of that year he wrote to Washington in the most positive terms: "I do not mean to grant any patents on the western waters, as I do not think I am at present empowered so to do."[1] Lord Dunmore had, however, at some previous date, issued patents to Washington for above twenty thousand acres of land on the Great Kanawha and Ohio rivers, as we know from the latter's advertisement, above mentioned, in the Maryland Journal and Baltimore Advertiser of August 20, 1773. The Governor of Virginia had no jurisdiction outside of his own province, but he had the right to grant from the King's domain two hundred thousand acres, in bounty-lands, to officers and soldiers who had served in the French and Indian war, and who should personally apply to him for land-warrants: To every field-officer, five thousand acres; to every captain, three thousand; to every subaltern or staff-officer, two hundred; and to every private soldier, fifty acres. These grants could be made in Canada or Florida, or in the so-called "Crown lands." The latter term was usually applied, after the proclamation of 1763, to the lands back of the Alleghanies and beyond the Ohio.

Private surveys in the above region had begun long before the time of Walpole's Grant, and the claims of officers and soldiers had, to some extent, been bought up by speculators. Washington and his land agent, William Crawford, had been particularly active in seeking out good tracts of land in the western country. As a field-officer, Washington was entitled, under the proclamation, to five thousand acres of bounty-land, but there is positive evidence to show that he had surveys for over seventy thousand acres; that he secured patents, in the names of officers and soldiers, for over sixty thousand, and that he himself was the owner of, at least, thirty-two thousand acres, which he called "the cream of the country — the first choice of it." There is a charming frankness in Washington's statement to the Reverend John

[1] Writings of Washington, II., p. 379.

Witherspoon concerning these lands. "It is not reasonable to suppose," he says, "that those who had the first choice, [who] had five years allowed them to make it in and a large district to survey in, were inattentive to the quality of the soil or the advantages of the situation."[1] There was nothing discreditable to Washington in his land speculations. We can only admire that far-sighted wisdom which so early discerned the importance of the western country, and that practical sagacity which was as great in affairs of private enterprise as it was afterwards in the affairs of state. It is certain, moreover, that in his business undertakings, Washington contemplated "an extensive public benefit as well as private advantage,"[2] for, already before the Revolution, he had begun a correspondence relative to the importation of Germans from the Palatinate to colonize his lands.[3] Washington is the prototype of that public spirit and private enterprise which are so characteristic of Americans, and which, after all, constitute the life-principle of the American Republic. While investigating the nature of those material interests out of which the American Union was developed, it is not improper to glance thus, in passing, at the business characteristics of the Father of his Country. This question of land claims is so interwoven with land grants and land speculations, both private and public, that it is necessary, for a proper understanding of the subject, to trace out, here and there, lines of individual conduct and the threads of personal motive.

It is uncertain when Lord Dunmore[4] first began to issue patents for the bounty-lands. We know that he must have

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[1] Washington-Crawford Letters, p. 78. For Washington's Land Speculations, see Appendix.

[2] See letter to Crawford about the Salt Springs, Washington-Crawford Letters, p. 31.

[3] See Writings of Washington, II., pp. 382–7.

[4] That Lord Dunmore patented Washington's land is evident from the latter's own statements. See Washington-Crawford Letters, p. 77. For the relation between Lord Dunmore and Washington, and for the former's

patented upwards of twenty thousand acres for Washington, as early as July, 1773, for we find Washington's advertisement of the same, bearing the date of the 15th of July. Washington speaks of these lands as "among the first which have been surveyed." In the Maryland Gazette for March 10, 1774, may be found an official notice, dated January 27, 1774, directing gentlemen, officers, and soldiers, who claim land under the proclamation of the 7th of October, 1763, and who had obtained warrants from the Earl of Dunmore, to appear in person or by agent, at the mouth of the Great Kanawha, on the 14th of April, and have their lands surveyed. The land-agents and surveyors, who went down the Kanawha upon the above errand, were stopped, or, as some say, attacked by Indians, and the hostilities which ensued brought on the bloody conflict of 1774, known as Lord Dunmore's War, which was waged by the Virginians against the Shawanese and Mingoes. This war may be regarded as the foundation of Virginia's military title to the lands back of the Alleghanies. Legal title she had not. The rumor which had been industriously circulated in January, 1774,[1] to the effect that the "new government" had fallen through, was without foundation. Lord Dunmore appears to have issued most of his patents in 1774, and to have made a violent effort, in the spring of that year, to assert the jurisdiction of Virginia over the entire region beyond the mountains. The attempt was made by Connolly, the agent of Lord Dunmore, to usurp authority even over territory which had formerly belonged to Pennsylvania. Connolly sought, but without success, to enforce the militia laws of Virginia in the county of Westmoreland, and to secure the country around Pittsburg for the province of Lord Dunmore. But the conquest of the back lands was soon effected by Virginia, and posses-

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interest in looking over the ground before granting further patents, see Appendix.

[1] Washington-Crawford Letters, p. 40.

sion made her title good. Conquest and possession became accomplished facts, and against such there is no law.

By Act of Parliament, in 1774, the Crown lands north-west of the Ohio were annexed to the royal province of Quebec. It was the so-called Quebec Bill,[1] which was referred to in the Declaration of Independence as one of "their acts of pretended legislation." The King was denounced "for abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government, and enlarging its boundaries." All the American colonies felt themselves more or less aggrieved by the Quebec Bill, for lands which had been rescued from the French by the united efforts of Great Britain and America were now severed from their natural connection with the settlements of the sea-board, and formed into a vast inland province, like the ancient Louisiana of France. French law, moreover, was revived at Quebec and absolute rule seemed everywhere imminent.

But the Declaration of Independence changed the relations of things. It was the general opinion in America, that "the Crown lands" were inseparable from colonial interests, and that, in case the war should be brought to a successful issue, those States having a legal title to the western country could assert jurisdiction over the territory which fell within their respective limits. At the outbreak of the Revolution, Virginia had annexed the "County of Kentucky" to the Old Dominion, and, in 1778, after the capture of the military posts in the north-west by Colonel George Rogers Clarke,[2] in a secret expedition undertaken by Virginia at her own expense, that enterprising State proceeded to annex the lands beyond the Ohio, under the name of the County of Illinois.

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[1] This document is reprinted in the Report of the Regents of the University on the Boundaries of the State of New York, pp. 90–92.

[2] For Clarke's own account of the Expedition, see Perkins' Annals of the West, (Cincinnati, 1846,) pp. 204–210. Clarke's commission from Patrick Henry, then Governor of Virginia, may be found in Perkins, p. 184.

The military claims of Virginia were certainly very strong, but it was felt by the smaller States that an equitable consideration for the services of other colonies in defending the back country from the French, ought to induce Virginia to dispose of a portion of her western territory for the common good.

It is easy now to conceive how royal grants to Massachusetts and Connecticut of lands stretching from ocean to ocean, must have conflicted with the charter claims and military title of Virginia to the great north-west. We have seen that Virginia's charter could be extended over the entire region beyond the Ohio. It is not necessary to quote the original charters[1] of Massachusetts and Connecticut, for, told in brief, the former's claim embraced the lands which now lie in southern Michigan and Wisconsin, or, in other words, the region comprehended by the extension westward of her present southern boundary and of her ancient northern limit,[2] which was "the latitude of a league north of the inflow of Lake Winnipiseogee in New Hampshire." The western claims of Connecticut covered portions of Ohio, Indiana, Illinois, and Michigan.

The chartered rights of New York were based upon the grant of 1664 to James, Duke of York, by his brother Charles II.[3] By an agreement originally made in 1683, the

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[1] The claims of Massachusetts were based upon the charter granted by William and Mary, in 1691, and those of Connecticut upon the charter granted by Charles II., in 1662. These documents may be found in the Laws of the United States respecting the Public Lands, pp. 78, 80 (ed. 1828). See also Federal and State Constitutions, Colonial Charters, etc., Part I.

[2] This statement is from Walker's Statistical Atlas of the U. S., 1875. (Areas and political Divisions, compiled by Mr. Stocking of the Patent Office.) The text of the original charter, although somewhat obscure, seems to imply that the northern limit of Massachusetts was three miles north of the head of the *Merrimac river*. Probably Mr. Stocking has some other source of information, for his work throughout is extremely well done, being the most reliable and concise exposition we have seen of that complicated subject, the land cessions.

[3] See Report of the Regents of the University on the boundaries of the State of New York, p. 11.

boundary between Connecticut and New York was fixed at a line twenty miles distant from the Hudson river. Massachusetts agreed, in 1773, to a continuation of the same line for her western limit.[1]

The extension of charter boundaries over the far west by Massachusetts and Connecticut, led to no trespass on the intervening *charter* claims of New York. Connecticut fell into a serious controversy, however, with Pennsylvania, in regard to the possession of certain lands in the northern part of the latter State, but the dispute, when brought before a court appointed by Congress, was finally decided in favor of Pennsylvania.[2] But in the western country, Massachusetts and Connecticut[3] were determined to assert their chartered rights against Virginia and the *treaty* claims of New York, for, by virtue of various treaties with the Six Nations and allies, the latter State was asserting jurisdiction over the entire region between Lake Erie and the Cumberland mountains, or, in other words, Ohio and a portion of Kentucky.[4] These claims were strengthened by the following facts: First, that the *chartered* rights of New York were merged in the Crown by the accession to the throne, in 1685, of the Duke of York as James II.; again, that the Six Nations and tributaries had put themselves under the protection of England, and that they had always been treated by the Crown as appendant to the government of New York; moreover, in the third place, the citizens of that State had borne the burden of protecting these Indians for over a hundred years.[5] New York was the great rival of Virginia in the strength

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[1] See above Report, pp. 58, 212.

[2] January 3, 1783. See Journals of Congress, IV., p. 129, for these proceedings, which are important, as illustrating the position of the old Congress in arbitration.

[3] See Plea in Vindication of the Connecticut Title to contested lands west of New York. By Benjamin Trumbull, New Haven, 1774.

[4] See Journals of Congress, IV., p. 21. Franklin's Works, IV., 324–379.

[5] Journals of Congress, IV., p. 22.

and magnitude of her western claims. In fact, the chief interest of the great land controversy turns upon the rival offers made to Congress by the two States at the instance of Maryland.

We have now in our mind's eye the conflicting claims of Virginia, Massachusetts, Connecticut, and New York to that vast region beyond the Ohio. We shall now consider, for a second topic, the process by which these various land claims were placed upon a national basis, or, more specifically,

II. The Influence of Maryland.

The immense importance of the region north-west of the Ohio as a source of national revenue, when the tide of immigration should set in, was recognized as early as 1776. Silas Deane, the agent whom the Continental Congress had sent to France, addressed a communication[1] to the Committee of Secret Correspondence, calling the attention of Congress to that triangular region described, in general, by the Ohio, the Mississippi, and the parallel of Fort Detroit. "These three lines," he says, "of near one thousand miles each, include an immense territory, in a fine climate, well watered, and, by accounts, exceedingly fertile. To this I ask your attention, as a resource amply adequate, under proper regulations, for defraying the whole expense of the war."

The first move that was ever made in Congress towards the assertion of national sovereignty over this western country, was made by Maryland. On the 15th of October, 1777, exactly one month before the Articles of Confederation were proposed to the Legislatures for ratification, it was moved "that the United States in Congress assembled, shall have the sole and exclusive right and power to ascertain and fix the western boundary of such States as claim to the Mississippi or South Sea, and lay out the land beyond the boun-

[1] Diplomatic Correspondence, edited by Sparks, I., p. 79.

dary, so ascertained, into separate and independent States, from time to time, as the numbers and circumstances of the people may require."[1] *Only Maryland voted in the affirmative.* But in this motion was suggested that idea of political expansion under the sovereign control of Congress, which ultimately prevailed and constituted, upon grounds of necessity, a truly National Republic. Not only the suggestion of a firm and lasting union upon the basis of a territorial commonwealth, but the chief influence in founding such a union, must be ascribed to Maryland. And yet, strange to say, this priority of suggestion has never been noticed, and, stranger still, the constitutional importance to this country of Maryland's subsequent opposition to the land claims has wholly escaped attention.

The original proposition that Congress should exercise sovereign power over the western country was a pioneer thought, or, as the Germans say, a *bahnbrechende Idee.* We have discovered by a careful examination of the Journals of the Old Congress, that Maryland was not only the first, but for a long time the only State, to advocate national jurisdiction over the western lands. The opposition to the establishment of a public domain, under the sovereign control of Congress was so great, at the outset, that the States possessing land claims succeeded, a few days after Maryland's motion, in adding a clause to the Ninth Article of the Confederation, to the effect that no State should be deprived of territory for the benefit of the United States.[2] In the remonstrances to this grasping policy of the larger States, by Rhode Island, New Jersey, and Delaware, we shall find that there was no thought of investing Congress with the rights of sovereignty over the Crown lands. What these States desired was either a share in the revenues arising from the western country, or, that the funds accruing from the sale of

[1] Journals of Congress, II., p. 290.

[2] October 27, 1777. See Journals of Congress, II., 304.

western lands should be applied towards defraying the expenses of the war. But of the western lands as the basis of republican expansion, under the national jurisdiction of Congress, these States seemed to have no conception whatever. Rhode Island, in a proposed amendment to the Articles of Confederation, expressly declared that all lands within those States, the property of which before the war was vested in the Crown of Great Britain, should be disposed of for the benefit of the whole confederacy, "reserving, however, to the States within whose limits such Crown lands may be the entire and complete jurisdiction thereof."[1] New Jersey in her remonstrance to the Ninth Article, while demanding that the Crown lands should be sold by Congress for defraying the expenses of the war, admits that "The jurisdiction ought, in every instance, to belong to the respective States within the charter or determined limits of which such lands may be seated."[2] Delaware also had a keen sense of the common interest of all the States in the sale of the unoccupied western lands, but of that interest as the basis of a truly national commonwealth she seems to have had no appreciation whatever.[3] The credit of suggesting and successfully urging in Congress, that policy which has made this country a great national commonwealth, composed of "free, convenient, and independent governments," bound together by ties of permanent territorial interests,—the credit of originating this policy belongs to Maryland, and to her alone. Absolutely nothing had been effected by Rhode Island, New Jersey and Delaware, before they ratified the Articles, towards breaking down the selfish claims of the larger States and placing the Confederation upon a national basis. Delaware, the last of all the States, except Maryland, to ratify the Articles, acceded to the latter, February 22, 1779, under a mild protest, which

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[1] Journals of Congress, II., p. 601.
[2] Ibid., II., p. 605.
[3] Ibid., III., pp. 201.

Congress allowed to be placed on file, "provided," as was said, "it should never be considered as admitting any claim."[1] Maryland was left to fight out the battle alone, and with what success we shall shortly see.

The "Instructions" of Maryland to her delegates, which were read in Congress, May 21, 1779, after the accession of Delaware, as above stated, forbidding them to ratify the Articles of Confederation before the land claims had been placed upon a different basis, must be regarded as one of the most important documents in our early constitutional history, for it marks the point of departure for those congressional enactments of the 6th of September and 10th of October, 1780, which were followed by such vital results for the constitutional as well as the material development of this country. From the effect of these instructions upon the acts and policy of Congress, we shall be able to trace out, from documentary evidence, the line of events which led to the great land cessions of Virginia and New York, and to the Ordinance of 1784 for the government of the ceded territory, which Ordinance was termed "a charter of compact," the articles of which should stand as "fundamental constitutions" between the thirteen original States and each of the new States therein described. The following brief citations from the original document will suffice to convey its tenor and spirit, and to indicate the attitude of Maryland towards the Confederation:[2]

"Although the pressure of immediate calamities, the dread of their continuance from the appearance of disunion, and some other peculiar circumstances, may have induced some States to accede to the present confederation, contrary to their own interests and judgments, it requires no great share of foresight to predict that when those causes cease to operate, the States which have thus acceded to the confederation will

[1] Journals of Congress, III., p. 209.
[2] Journals of Congress, III., p. 281.

eagerly embrace the first occasion of asserting their just rights and securing their independence. Is it possible that those States, who are ambitiously grasping at territories, to which, in our judgment, they have not the least shadow of exclusive right, will use with greater moderation the increase of wealth and power derived from those territories, when acquired, than what they have displayed in their endeavors to acquire them? We think not. . . . Suppose, for instance, Virginia indisputably possessed of the extensive and fertile country to which she has set up a claim, what would be the probable consequences to Maryland? . . . Virginia, by selling on the most moderate terms, a small proportion of the lands in question, would draw into her treasury vast sums of money and . . . would be enabled to lessen her taxes: lands comparatively cheap and taxes comparatively low, with the lands and taxes of an adjacent State, would quickly drain the State, thus disadvantageously circumstanced, of its most useful inhabitants, its wealth; and its consequence, in the scale of the confederated States, would sink of course. A claim so injurious to more than one-half, if not the whole of the United States, ought to be supported by the clearest evidence of the right. Yet what evidences of that right have been produced? . . . We are convinced, policy and justice require that a country unsettled at the commencement of this war, claimed by the British crown, and ceded to it by the treaty of Paris, if wrested from the common enemy by the blood and treasure of the thirteen States, should be considered as a common property, *subject to be parcelled out by Congress into free, convenient and independent governments*, in such manner and at such times as the wisdom of that assembly shall hereafter direct. . . .

"We have spoken with freedom, as becomes freemen, and we sincerely wish that these our representations may make such an impression on that assembly [Congress] as to induce them to make such addition to the articles of confederation as may bring about a permanent union."

In connection with the above Instructions, which were passed by the Maryland legislature as early as December 15, 1778, was sent another document, bearing the same date, which was called a Declaration. The design was, as we know from the Instructions themselves, to bring the Declaration before Congress at once, to have it printed and generally distributed among the delegates of the other States. The Instructions were to be read, in the presence of Congress, at some later period, and formally entered upon the journals of that body. We find that the Declaration was really brought forward, by the Maryland delegates, on the sixth of January, 1779, but the consideration of the same was postponed, and the document itself does not appear in the journals. In Hening's Statutes of Virginia, however, among the papers relating to the Cession of North-Western Territory, this Declaration is to be found, side by side with the Maryland Instructions, and both immediately preceding the so-called "Virginia Remonstrance," dated December 14, 1779, and an act of the New York legislature, of February 19, 1780, called "An act to facilitate the completion of the articles of confederation and perpetual union, among the United States of America."[1] As the latter documents reveal the first practical results of Maryland's policy in opposing the land claims, it is necessary to investigate their origin.

In May, 1779, the same month, it will be remembered, that the Maryland Instructions were read before Congress, the Virginia legislature passed an act for establishing a Land Office and for ascertaining the terms upon which land grants should be issued.[2] It was declared that vacant western territory, belonging to Virginia, should be sold at the rate of forty pounds for every hundred acres. In another act, passed about the same time, the patents issued to officers and soldiers, under the proclamation of 1763, by any royal

[1] Hening, Virginia Statutes at Large, X, pp. 549–61.
[2] Ibid., pp. 50–65.

governor of Virginia, were declared valid, but all unpatented surveys were to be held null and void; except in the case of settlers actually occupying lands to which no person had a legal title. Such settlers were to be allowed four hundred acres, on the condition of entering their claims at the Land Office. By such measures was Virginia proceeding to dispose of the western lands, to which Maryland had set up a claim in the interest of the United States. But Virginia was trespassing on the legal rights of the great land companies, particularly upon the claims of the Vandalia to Walpole's Grant, which we have previously described. On the fourteenth of September, 1779, a memorial was read to Congress, in behalf of the interests of Thomas Walpole and his associates. This memorial was referred to a committee on the eighth of October, and the favorable report which was subsequently made upon the claims of American members of the Vandalia Company has already been mentioned.[1] But, on the thirtieth of October, long before this committee had reported, the following resolution was introduced by *Mr. William Paca, of Maryland, and seconded by his colleague, Mr. George Plater:*

"WHEREAS, the appropriation of vacant lands by the several states during the continuance of the war will, in the opinion of Congress, be attended with great mischiefs; therefore,

"*Resolved*, That it be earnestly recommended to the State of Virginia, to reconsider their late act of assembly for opening their land-office; and that it be recommended to the said state, and all other states similarly circumstanced, to forbear settling or issuing warrants for unappropriated lands, or granting the same during the continuance of the present war."[2]

This resolution was adopted, only Virginia and North Carolina voting in the negative. The New York delegates were divided.

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[1] See p. 15.

[2] Journals of Congress, III., p. 384.

These steps bring us to the famous Remonstrance, which was addressed "by the General Assembly of Virginia to the delegates of the United American States in Congress assembled." The connecting link between the Maryland Instructions and Virginia's Remonstrance is supplied by the above Resolution of Mr. Paca. Virginia protests against the idea of Congress exercising *jurisdiction*, or any right of adjudication concerning the petitions of the Vandalia or Indiana land companies, or upon "*any other matter*," subversive of the internal policy of Virginia or any of the United States. But in this Remonstrance, Virginia declares herself "ready to listen to any just and reasonable propositions for removing the *ostensible* causes of delay to the complete ratification of the confederation."[1] The word *ostensible* is italicized in the original document and refers, of course, to Maryland, for this State was now the only one which had not ratified the Articles. Manifestly, the influence of Maryland was, at last, beginning to tell. It was the sturdy opposition of this State to the grasping[2] claims of Virginia and the larger States, which first awakened a readiness for compromise in the matter of land claims. Hening says Maryland "*insisted* that the States, claiming these western territories, should bring them into the common stock, for the benefit of the whole Union."[3] Howison, the most recent historian of Virginia, declares, that "Maryland was inflexible and refused to become a party [to the Confederation] until the claims of the States should be on a satisfactory basis."[4]

The readiness of Virginia to do something to remove the "*ostensible cause*" of delay on Maryland's part, indicates that

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[1] Hening, Virginia Statutes at Large, X., pp. 357–59.

[2] Virginians who object to this phrase are referred to the Writings of Washington, IX., p. 33, where, in a letter to Jefferson, he says: "I am not less in sentiment with you respecting the impolicy of this State's *grasping* at more territory than they are competent to the government of."

[3] Hening, Virginia Statutes at Large, X., p. 548.

[4] Howison, History of Virginia, II., p. 286.

her land claims were becoming less positive. But the act of the legislature of New York "to facilitate the completion of the Articles of Confederation," shows most decidedly that Maryland's cause was prevailing. The historic connection of this measure with the influence of Maryland delegates in Congress has never been shown, but from materials now accessible in a letter of General Schuyler, first published in 1873, in the Reports of the Regents of the University on the Boundaries of the State of New York, we think this connection may fairly be demonstrated. General Schuyler was delegate to Congress from New York in 1779. On the twenty-ninth of January, 1780, he addressed a letter from Albany, to the New York legislature, which gives us the key to their act of the nineteenth of February. General Schuyler had been advocating in Congress a treaty with the Cayuga Indians. "Whilst the report of the committee on the business I have alluded to," he says, "was under consideration, *a member* moved, in substance, that the Commissioners for Indian Affairs in the Northern Department should require from the Indians of the Six Nations, as a preliminary Article, a cession of part of their country, and that the territory so to be ceded should be for the benefit of the United States in general and grantable by Congress." The first question is, who was this member? The policy recommended in the above motion is very suggestive of some Maryland delegate. On referring to the Journals of Congress for the above discussion, we find two motions on the subject mentioned by General Schuyler; the first was made by *Mr. Forbes of Maryland* and seconded by Mr. Houston of New Jersey; the other was made by Mr. Marchant of Rhode Island and seconded by *Mr. Forbes*. Both motions were defeated, but that which alarmed General Schuyler and of which he thought it necessary to unburden himself to his constituents, was simply this: "We had a few days after," he says, "a convincing proof that an idea prevailed that this and some other States ought to be divested of part of their

territory for the benefit of the United States, when *a member* afforded us the perusal of a resolution, for which he intended, to move the House, purporting that all the lands within the limits of any of the United States, heretofore grantable by the king of Great Britain whilst these States (then Colonies) were in the dominion of that prince, and which had not been granted to individuals, should be considered as the *joint property* of the United States and disposed of by Congress for the benefit of the whole Confederacy." We have searched in vain for the above resolution in the Journals of Congress, although, from internal evidence, there is little doubt but that it came from the same source as the original motion, which so alarmed General Schuyler.

The chief importance which this letter to the New York legislature has for us, in this connection, is the revelation it affords of the growing influence of the Maryland policy in Congress. General Schuyler confesses that the opposition to the original motion [of Mr. Forbes] was chiefly based upon the inexpediency of such an assertion of Congressional authority while endeavoring to secure a reconciliation with the Indians. In private conversation, the General had ascertained that certain gentlemen, who represented States in the same circumstances as New York in the matter of land claims, were inclined to support the resolution in its new form. It was urged by the friends of the proposed resolution, that a reasonable limitation of the land claims would prevent controversy "*and remove the obstacle which prevented the completion of the Confederation.*" General Schuyler says he endeavored, with great discretion, to ascertain the idea of the advocates of this measure as to what would constitute a reasonable limitation of the claims. "This they gave," he says, "by exhibiting a map of the country, on which they drew a line from the north-west corner of Pennsylvania (which in that map was laid down as on Lake Erie) through the strait that leads to Ontario and through that Lake and down the St. Lawrence to the forty-fifth degree of latitude, for the

bounds of the State in that quarter. Virginia, the two Carolinas, and Georgia, they proposed to restrict by the Alleghany Mountains, or at the farthest by the Ohio, to where that river enters the Mississippi and by the latter river to the south bounds of Georgia — That all the Territory to the west of these limits should become the *property* of the Confederacy. We found this matter had been in contemplation some time, the delegates from North Carolina having then already requested instructions from their constituents on the subject, and my colleagues were in sentiment with me that it should be humbly submitted to the Legislature, if it would not be proper to communicate their pleasure in the premises by way of instruction to their servants in Congress." Such were the appeals of congressmen to their constituents before national interests were fully recognized and before National Government was developed from grounds of necessity. But this letter clearly indicates the influence of the Maryland idea and the growth of a truly national sentiment in Congress, which was destined to find expression in that famous resolution of the sixth of September, 1780, wherein a general land cession was first recommended to the States holding title to western territory.

It will be seen upon examination of the proceedings of the New York legislature,[1] that this letter from General Schuyler was the immediate occasion of the passage of an act by the Senate and Assembly of that State, called "An act to facilitate the completion of the articles of confederation and perpetual union among the United States of America." In this act, which was passed the nineteenth of February, 1780, New York authorized her delegates in Congress to make either an unreserved or a limited cession of her western lands according as these delegates should deem it expedient. This act was read in Congress on the seventh of March.

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[1] Reprinted in full in the Report of Regents of the University on the Boundaries of the State of New York, pp. 141–149. For the act itself see Journals of Congress, III., p. 582.

On the sixth of September, 1780, a memorable date in the history of the land question, a report was made on the Maryland Instructions, the Virginia Remonstrance, and the above Act of the New York legislature. Although this report did not recommend an examination of the points at issue between Maryland and Virginia, it did recommend a liberal cession of western lands by all states which laid claim to such possessions. "It appears more advisable," said the committee, "to press upon those states which can remove the embarrassments respecting the western country, a liberal surrender of a portion of their territorial claims, since they cannot be preserved entire without endangering the *stability* of the general confederacy; to remind them how indispensably necessary it is *to establish the federal union on a fixed and permanent basis, and on principles acceptable to all its respective members;* how essential to public credit and confidence, to the support of our army, to our tranquillity at home, our reputation abroad, to our very existence as a free, sovereign and independent people; that they are fully persuaded the wisdom of the respective legislatures will lead them to a full and impartial consideration of a subject so interesting to the United States, and *so necessary to the happy establishment of the federal union;* that they are confirmed in these expectations by a review of the before-mentioned act of the legislature of New York, submitted to their consideration; that this act is expressly calculated to accelerate the Federal alliance, by removing, as far as depends on that state, the impediment arising from the western country, and for that purpose to yield up a portion of territorial claim for the general benefit; Whereupon

Resolved, That copies of the several papers referred to the committee be transmitted, with a copy of the report, to the legislatures of the several states, and that it be earnestly recommended to those states, who have claims to the western country, to pass such laws, and give their delegates in Congress such powers as may effectually remove the *only obstacle*

to a final ratification of the articles of confederation; and *that the legislature of Maryland be earnestly requested to authorize their delegates in Congress to subscribe the said articles.*"[1]

But Maryland awaited some definite proposals from Virginia and the other states which laid claim to the western lands. Madison, in a letter of September 12, 1780, remarks with great significance, "As these exclusive claims formed the only obstacle with Maryland, there is no doubt that a compliance with this recommendation [of Congress] will bring her into the Confederation."[2] Connecticut[3] soon offered a cession of western lands, provided that she might retain the jurisdiction. It is a remarkable fact that, at this period, Alexander Hamilton should have favored such a reservation by states ceding lands to the Confederation. In his proposals for constitutional reform, in a letter to James Duane, of New York, dated September 3, 1780, he says that Congress should be invested with the whole or a portion of the western lands as a basis of future revenue, "*reserving the jurisdiction to the States by whom they are granted.*"[4]

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[1] Journals of Congress, III., p. 516.

[2] Madison Papers, p. 50.

[3] This offer was made October 10, 1780. The terms of the legislative act show conclusively that the Maryland Instructions were exercising their influence upon the country. "This Assembly taking into their consideration a Resolution of Congress of the 6th of September last, recommending to the several States which have vacant unappropriated Lands, lying within the Limits of their respective Charters and Claims, to adopt measures which may *effectually remove the obstacle that prevents the ratification of the Articles of confederation*, together with the Papers from the States of New York, Maryland and Virginia, which accompanied the same, and being anxious for the accomplishment of an event most desirable and important to the Liberty and Independence of this rising Empire, will do everything in their power to facilitate the same notwithstanding the objections which they have to several parts of it. *Resolved, etc.*—Laws of Connecticut, printed in Report of the Regents of the University on the Boundaries of the State of New York, p. 157 (1873).

[4] Works of Hamilton, I., p. 157.

But the original idea of Maryland that the western country should "be parcelled out by Congress into free, convenient, and independent governments," was destined to prevail. On the tenth of October, it was resolved by Congress that those lands which should be ceded in accordance with the recommendation of the sixth of September, should not only be disposed of for the benefit of the Confederation, but should be formed into distinct republican states, which should become members of the federal union and have the same rights of sovereignty as the other states.[1] It was added, probably as an inducement to Virginia to cede her western lands, that Congress would re-imburse any particular state for expenses incurred, since the commencement of the war, in subduing or defending any part of the western territory. The expedition of George Rogers Clarke, for the reduction of the north-western posts, had been undertaken by Virginia without aid from Congress or from the Continental army, and this fact had been urged by Virginia as a crowning title to the lands north-west of the Ohio. But Virginia seems to have acted upon the above recommendation of Congress, for, by her act[2] of the second of January, 1781, she offered to cede to the Confederation complete jurisdiction over all lands north-west of the Ohio on certain conditions, the first of which, in regard to the disposition of territory and the formation of distinct republican states, was taken almost verbatim from the above resolutions of Congress.

Howison, the historian of Virginia, admits that "this cession was made with the immediate design of inducing all the states to become parties to the Confederation" and "the effect of Virginia's offer," he asserts, "was in accordance with the hopes of its advocates, for Maryland became a party to the Confederation."[3] If a desire to facilitate the completion of

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[1] Journals of Congress, III., p. 535.

[2] Hening, Virginia Statutes at Large, X., p. 564, or Journals of Congress, IV., p. 265.

[3] Howison, History of Virginia, II., p. 282.

the union was indeed the motive of the proposed land cessions by New York and Virginia, as the language of their legislative acts certainly justifies us in supposing, then alone the attitude of Maryland towards the Confederation must be regarded as a sufficient occasion for their action, for Maryland was the only state which had not ratified the Articles. The keystone to the old Confederation was not laid until Maryland had virtually effected her object and secured the offer of land cessions to the United States from Virginia, as well as from New York and Connecticut. As Hildreth says of Maryland, "she made a determined stand, steadily refusing her assent to the Confederation, without some guarantee that the equitable right of the union to these western regions should be respected."[1]

We may doubt, however, whether the action of Viginia, independently of the previous offer by New York, would have been sufficient to induce Maryland to join the Confederation, for Virginia had attached such obnoxious conditions[2] to her proposed cession, that Congress as well as Maryland was dissatisfied with the same. Virginia demanded, among other things, that Congress should guarantee to her the undisturbed possession of all lands south-east of the Ohio and that claims of other parties to the north-west territory should be annulled as infringing upon the chartered rights of Virginia, for, in making the proposed cession, Virginia evidently desired to put the Confederation under as heavy an obligation as possible. These conditions, which Congress pronounced "incompatible with the honor, interests and peace of the United States,"[3] led to an encouragement of the New York offer, which was formally made in Congress, March 1, 1781. On that very day, Maryland ratified the Articles and the first legal union of the United States was complete. The coinci-

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[1] Hildreth, History of the United States, III., p. 399.
[2] Journals of Congress, IV., p. 266.
[3] Ibid, p. 22.

dence in dates is too striking to admit of any other explanation than that Maryland and New York were acting with a mutual understanding. An act authorizing the delegates from Maryland to subscribe to the Articles had been read in Congress on the twelfth of February. This act had been passed by the legislature of that state ten days[1] before, indicating that the Virginia offer, of January 2, had not been wholly without influence upon Maryland, although her delegates appear to have delayed signing the Articles until the New York offer had been fully secured and the land question had been placed upon a national basis. That Maryland was dissatisfied with the partial and illiberal cession by Virginia is evident from the closing paragraph of the above-mentioned act of her legislature. "It is hereby declared, that, by acceding to the said Confederation, this State doth not relinquish, or intend to relinquish any right or interest she hath, with the other united or confederated states, to the back country; but claims the same as fully as was done by the legislature of this state, in their declaration which stands entered on the Journals of Congress." Maryland furthermore declared that no Article of the Confederation could or ought to bind her or any other state to guarantee *jurisdiction* over the back lands to any individual member of the confederacy.

The offer of Virginia, reserving to herself jurisdiction over the County of Kentucky; the offer of Connecticut, withholding jurisdiction over all her back lands; and the offer of New York, untrammeled by burdensome conditions and conferring upon Congress complete jurisdiction over her entire western territory,—these three offers were now prominently before the country. The completion of the union by Maryland had occasioned great rejoicing throughout the states and public sentiment was fast ripening for a truly national policy with reference to the disposal of the western lands. If we examine the Madison Papers and the Journals of Congress

[1] February 2, 1781. Journals of Congress, III., pp. 576-7.

from this time onward to 1783 we shall find that congressional politics seem to turn upon three questions, (1) finance, (2) the disposal of the western lands, and (3) the admission of Vermont into the union. We shall find that the question of providing for the public debt was inseparably connected with the sale of the western lands, and that the real reason why Vermont was excluded from the union until 1791 is to be sought for in the influence which the New York land cession exerted upon party feeling in Congress. These matters cannot be traced out here and we must briefly pass over the acceptance of the New York and Virginia cessions, which occasioned so much debate and controversy between the years 1781 and 1783.

A committee that had been appointed by Congress to inquire into the claims of the different states and land companies, reported May 1, 1782, in favor of accepting the offer of New York, which had been made ten months before, on the very day Maryland had formally acceded to the Confederation. One of the chief reasons assigned by the above committee, why the offer of New York should be preferred to that of Virginia, was that Congress, by accepting the New York cession, would acquire *jurisdiction*[1] over the whole western territory belonging to the Six Nations and their allies, whose lands, as we have seen, extended from Lake Erie to the Cumberland Mountains, thus covering the lands south-east of the Ohio, which Virginia desired to retain within her own jurisdiction. On the twenty-ninth of October, 1782, *Mr. Daniel Carroll, of Maryland,* moved that Congress accept the right, title, jurisdiction, and claim of New York, as ceded by the agents of that state on the first of March, 1781. By the adoption of this motion, it was supposed that the offers of Connecticut and Virginia had received a decided rebuff, but, in the end, it was found necessary to conciliate Virginia, before proceeding to dispose of the western lands. On the thirteenth day of September, 1783,

[1] Journals of Congress, IV., p. 22.

it was voted by Congress to accept the cession offered by Virginia, of the territory north-west of the Ohio, provided that state would waive the obnoxious conditions concerning the *guaranty* of Virginia's boundary, and the annulling of all other titles to the north-west territory. Virginia modified her conditions as requested, and on the twentieth of October, 1783,[1] empowered her delegates in Congress to make the cession, which was done by Thomas Jefferson, and others, March 1, 1784, just three years after the accession of Maryland to the Confederation.

Massachusetts ceded her western lands, together with jurisdiction over the same, April 19, 1785, and Connecticut followed September 14, 1786, reserving, however, certain lands south of Lake Erie for educational and other purposes. This was the so-called "Connecticut Reserve," a tract nearly as large as the present State of Connecticut. Washington strongly condemned this compromise[2] and Mr. Grayson said it was a clear loss to the United States of about six million acres already ceded by Virginia and New York. Connecticut granted five thousand acres of this Reserve to certain of her citizens, whose property had been burned or destroyed during the Revolution, and the lands thus granted were known as the Fire Lands. The remainder of the Reserve was sold in 1795 for $1,200,000, which sum has been used for schools and colleges. Jurisdiction over this tract was finally ceded to Congress, May 30, 1800, and thus, at the close of the century, the accession of the northwest territory was complete.[3]

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[1] See Hening's Statutes, XI., pp. 326–28.

[2] Writings of Washington, IX., p. 178.

[3] For deed of cession, see Land Laws of the United States, p. 107. James A. Garfield's paper on the "Discovery and Ownership of the Northwestern Territory, and Settlement of the Western Reserve," contains some valuable matter. It is No. 20 of the publications of the Western Reserve and Northern Ohio Historical Society, 1874.

Although, in this paper, we are chiefly concerned with the origin of the Northwest Territory, we have thought it not improper to append the dates

We have thus traced the process by which the great land cessions were effected, and have seen that it was primarily the opposition of Maryland to the grasping claims of Virginia, which put the train of compromise and land cessions in motion. We have seen that New York first offered to cede her western territory in order "to facilitate the completion of the Articles of Confederation," and, that on the very day her offer was formally made in Congress, *Maryland laid the keystone of the Confederation* and, as we shall attempt to show, of the American Union. We come now to the third and last topic of our research, viz:

III. Origin of our Territorial Government and National Sovereignty.

We have seen that Maryland first suggested the idea of investing Congress with complete sovereignty over the western country, and that it was primarily through her influence that the land cessions were effected. The constitutional importance of this acquisition of territory by the Confederation has never been brought out in its true light and proper historic connections. Writers have told us, indeed, how a meeting of commissioners from Maryland and Virginia at Alexandria, in 1785, to discuss and concert uniform commercial regulations

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of those land cessions which were immediately occasioned by the above, and of those later accessions, by purchase or conquest, which have more than doubled our national domain:

South Carolina Cession,	1787
North Carolina "	1790
Georgia "	1802
Louisiana Purchase,	1803
Spanish Cession of Florida,	1819
Texas Annexation,	1845
First Mexican Cession,	1848
Texas Cession,	1850
Second Mexican Cession, or the Gadsden Purchase,	1853
Alaska,	1867

for these two States, was the original point of departure which led to the Annapolis and Philadelphia Conventions, and hence to the adoption of the present constitution; but no investigator appears to have discovered the intimate connection between the Virginia land cession of 1784, which we have just noticed, and this friendly conference between Maryland and Virginia, from which such great events are said to flow. What light, for example, is thrown upon that meeting in Alexandria by the following passage from a letter of James Madison to Thomas Jefferson, written in March, 1784, about a fortnight after the Virginia cession, but a full year before the above commercial convention was brought about! "The good humor," Madison[1] says, "into which the cession of the back lands must have put Maryland, forms an apt crisis for any negotiations which may be necessary."

We have heard also, that these Alexandria commissioners went to Mount Vernon and there conferred with George Washington, who, as there is some reason to believe, first suggested a national convention to concert uniform commercial regulations for the whole country; but no one has ever shown how the first steps towards the organization of our public domain into new States were also suggested by George Washington and not by Thomas Jefferson, as is commonly supposed. The idea of parcelling out the western country "into free, convenient and independent governments" was first proclaimed by Maryland in those famous Instructions to her delegates, but the first definite *plan* for the formation of new States in the west is to be found in a letter[2] written the seventh of September, 1783, by General Washington to James Duane, member of Congress from New York. The letter contains a series of wise observations concerning "the line of conduct proper to be observed, not only towards the Indians, but for the government of the citizens of America in their

[1] Writings of Madison, I., p. 74.

[2] Sparks' Life and Writings of Washington, VIII., p. 477.

settlement of the western country." Washington's suggestions in regard to laying out two new States are particularly interesting and valuable from an historical point of view, because the conformation which he recommends for them bears a striking resemblance to the present shape of Ohio and Michigan, whereas Jefferson's original suggestions for ten States in the north-west, lying in tiers, between meridians and parallels of latitude, was never adopted, and fortunately, perhaps, for the reputation of the country; for Jefferson would have named these States: Sylvania, Michigania, Chersonesus, Assenisipia, Metropotamia, Illinoia, Saratoga, Washington, Polypotamia, and Pelisipia![1] The practical suggestions of George Washington with reference to adopting an Indian policy and some definite scheme for organizing the western territory, were adopted almost word for word in a series of resolutions by Congress, which are to be found in the Secret Journals of that body, under the date of October 15, 1783.[2] In referring to the regular Journal of Congress for the above date, we find the report of a committee consisting of Mr. Duane, of New York, Mr. Peters, of Pennsylvania, *Mr. Daniel*[3] *Carroll, of Maryland*, and two other gentlemen, to which committee sundry letters and papers concerning Indian affairs had been referred. The committee *acknowledge in their report that they have conferred with the*

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[1] National Intelligencer, August 26, 1847. Notes on the Ordinance of 1787, by Peter Force. Sparks' Life and Writings of Washington, IX., p. 48.

[2] Dr. Austin Scott, formerly of the Johns Hopkins University, now Professor of History in Rutger's College, was the first to discover this remarkable coincidence.

[3] Charles Carroll of Carrollton left Congress in 1778. Daniel Carroll was delegate from 1780 to 1784 and again from 1789 to 1791. He signed the Articles of Confederation in the name of Maryland, and also the present Constitution. He seems to have exercised considerable influence in Congress. He was three times elected chairman and once appointed commissioner to treat with the Southern Indians, but declined the office on account of ill-health.

commander-in-chief. When now we recall the fact that the chairman of the above committee was James Duane, the very man to whom Washington addressed his letter of the seventh of September, the whole matter clears up and George Washington stands revealed as the moving spirit in the first active measures for the organization of the Public Lands.

Six days after the date of Washington's letter to James Duane, the report of the committee on the Virginia cession was called up, and it was voted by Congress to accept Virginia's offer under the conditions which we have previously stated. That which interests us in this connection is the attempt made by *Mr. Carroll, of Maryland,* to postpone the consideration of the Virginia offer for the adoption of an important resolution in which the rights of absolute sovereignty over the western territory are claimed for the United States, "as one undivided and independent nation, with all and every power and right exercised by the king of Great Britain over the said territory." Mr. Carroll proposed in his resolution the appointment of a committee to report on the most eligible parcels of land for the formation of one or more convenient and independent States. Although unsuccessful, this is the boldest attempt that is recorded on the Journals of Congress for the *assertion of national sovereignty and of the rights of eminent domain over the western territory.*[1]

About one month later, Congress having voted to accept the Virginia offer, on certain conditions, we find the above committee on Indian affairs, of which Mr. Duane, of New York, was chairman and *Mr. Carroll, of Maryland,* a member, reporting a series of resolutions in which the influence of Washington may be clearly traced. It was declared to be a wise and necessary measure to erect a district of the western territory into a distinct government, and it was resolved that a committee should be appointed to report a plan for connecting with the Confederation, by a temporary government,

[1] Journals of Congress, IV., pp. 263–265.

the inhabitants of the new district until their number and circumstances should entitle them to form a permanent constitution for themselves, on republican principles and, as citizens of a free, sovereign, and independent State, to be admitted into the union. In these resolutions lies the germ of Jefferson's ordinance, which was reported March 1, 1784. This fact and the connection of Duane's resolutions with the original suggestions by George Washington have never before been brought out. The influence exerted by the sage of Mount Vernon upon the Alexandria commissioners towards the practical reform of our commercial regulations was like that exercised in the above scheme for establishing a territorial government north-west of the Ohio, even before that territory had been fully ceded. Washington's plans were what the Germans would call "*bahnbrechend.*" His suggestions were the pioneer thoughts of genius; they opened up the ways and pointed out the means.

We shall not be able in this paper to consider the Ordinance of 1784, much less that of 1787, for the government of the North-West Territory. Both of these themes are extremely important and require a careful investigation. We must be content with having found the missing link which connects the Ordinance of 1784 with the practical suggestions of George Washington and with the original idea of Maryland that Congress should assume National Sovereignty over the western territory. Although this idea, which Maryland proclaimed as early as 1777, did not obtain that formal recognition which Mr. Carroll hoped to secure by his resolution of the thirteenth of September, 1783, yet, in the nature of things, arose a sovereign relation between the people of the United States and this territorial commonwealth in the west.

And just here lies the immense significance of this acquisition of Public Lands. It led to the exercise of National Sovereignty in the sense of eminent domain, a power totally foreign to the Articles of Confederation. Congress had not the slightest authority to organize a government for the

western territory. The Ordinance of 1784 was never referred to the States for ratification, and yet its articles were termed a "charter of compact," and it was declared that they should stand as "*fundamental constitutions*"[1] between the thirteen original States and each of the new States therein described. Consider, moreover, the importance of the Ordinance of 1787 in establishing the bulwarks of free soil beyond the Ohio and in providing for the educational interests of the Great North-West. "I doubt," says Daniel Webster,[2] "whether one

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[1] Journals of Congress, IV., p. 380.

[2] Webster's Works, III., p. 263. Webster was mistaken in ascribing the authorship of this famous Ordinance to Nathan Dane. Mr. W. F. Poole, of Chicago, in his admirable monograph on the Ordinance of 1787 (see North American Review, April, 1876) has proved conclusively that Mr. Dane could not have been the author, and has made out a strong case for Dr. Manasseh Cutler, of Massachusetts. The same view is taken in a paper read before the New Jersey Historical Society, May 16, 1872. See Proceedings of that society, Second Series (1867–74) III., p. 76. There is a paper on the "Ordinance of 1787" by Edward Coles, formerly governor of Illinois (1822–26), which was read before the Pennsylvania Historical Society, June 9, 1856, and was issued by the Press of the Society in that year. It contains, however, many errors, which Mr. Poole has now set aside. Poole's article is reprinted in pamphlet form by Welch, Bigelow & Co., Cambridge, 1876. For a further discussion of the origin of the Ordinance of 1787, see "The St. Clair Papers," and a review of the same in *The Nation*, May 4, 1882, an extract from which is here reprinted:

The origin of this famous Ordinance, which established free soil, land titles, townships, schools, civil and religious liberty, beyond the Ohio, and the idea of a growing system of federal States, gradually organized from the national domain under the sovereign control of Congress, is one of the most disputed questions of American constitutional history. Daniel Webster, in his speech against Hayne on the Western land question, took occasion to claim the authorship of the Ordinance for Nathan Dane, of Massachusetts, and said, moreover, that "it was carried by the North, and by the North alone." Hayne and Benton at once opposed this Northern view, and claimed for the South the chief credit in passing the Ordinance, and the honor of authorship for Thomas Jefferson (Benton, i., 133–6). Since that memorable debate, partisans of Massachusetts and Virginia, of the North and South, have battled for the possession of historic ground, which in point of fact belongs to neither party, but to both. The side of Jefferson is best supported by Hon. Edward Coles, a Virginian, at one time Governor of

single law of any law-giver, ancient or modern, has produced effects of more distinct, marked, and lasting character than the Ordinance of 1787."

This Ordinance is an exhibition of national sovereignty on the grandest scale, yet there was no authority for it. The present Constitution had not been adopted and yet Congress was proceeding to legislate on national interests with a boldness which might well have startled those who believe in the doctrine that Government derives its just powers from the

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Illinois, in a paper published in 1856 by the Historical Society of Pennsylvania, on the Ordinance of 1787. The Dane point of view is well presented, first, in Dane's own letter to Webster, printed in the Proceedings of the Massachusetts Historical Society, February, 1869, and, secondly, in Spencer's 'History of the United States' (ii., 202–9), which contains a letter of Dane to Rufus King, written shortly after the passage of the Ordinance. Broader than these partisan views are the judgment of Peter Force in the *National Intelligencer*, August 26, 1847 (reprinted in the St. Clair Papers); of W. F. Poole, in the *North American Review*, April, 1876; and of the editor of the St. Clair Papers, who follows Mr. Poole in the view that the Ordinance was passed at the instance of Dr. Manasseh Cutler, Ministerial Agent for the Ohio company, composed of New England men, and with power from them and others to negotiate the purchase of 5,000,000 acres of land, but suggests that Mr. Poole "gives too little consideration to the influence of others." Mr. Smith mentions the influence of St. Clair, who, by virtue of his position as President of Congress, appointed a committee favorable to Dr. Cutler's scheme, and thus supplemented the efforts of that estimable divine, from Ipswich, Massachusetts, who, in these degenerate times, would perhaps be called a lobbyist. Mr. Poole, if we understand him, does not claim that Dr. Cutler actually framed the Ordinance, but that he influenced its revision and successful passage. Mr. Smith's view that there were "many authors" is sound. The Ordinance of 1787, like all products of wise legislation, was created not by one man or one section of country, but by the concurrent wisdom of many men and by the unanimous vote of Congress. Jefferson and Dane, Pickering and King, of Massachusetts, Carrington and Lee of Virginia, Kean, of South Carolina, and Smith, of New York, the moral and educational interests of New England (represented by Dr. Cutler), the economic interests of the whole country (providing for its public debts by the sale of public lands), the "private speculation" of "many of the principal characters in America" (Cutler's Diary), the personal popularity of St. Clair with the Southern party, which wished to reimburse the General for his Revolutionary losses by making him Governor

consent of the governed. Madison, in a contribution to the Federalist, avails himself of this fact, that Congress was already exercising sovereignty, as an argument for establishing constitutional government with defined powers. "It is now no longer a point of speculation and hope," he says, "that the western territory is a mine of vast wealth to the United States: . . . . Congress have assumed the administration of this stock. They have begun to render it productive. Con-

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of the Northwest—all these influences, and many more besides, entered into the formation and adoption of the Ordinance of 1787.

The germ of this Magna Charta of the West lay in Jefferson's idea of "a charter of compact," the articles of which should "stand as fundamental constitutions ["conditions" Mr. Smith and Peter Force have it, *cf.* Journals of Congress, iv., 380] between the thirteen original States, and each of the several States now newly described," which Jefferson, according to the first draft which Peter Force copied, would have named Sylvania, Michigania, Cheronesus, Assenisipia (from Assenisipi or Rock River), Metropotamia, Illinoia, Saratoga, Washington, Polypotamia, and Pelisipia! The country has escaped some of Jefferson's fancies, but his idea of a federal compact between the East and the West was good, and it was adopted by Congress April 23, 1784, and re-adopted July 13, 1787, in the so-called "articles of compact," which, as Nathan Dane said to Webster, are the most important part of the Ordinance and were made "to endure forever." Federal unity with the great West was a Jeffersonian idea, and it was the main idea of the Ordinance. The anti-slavery clause, which Jefferson would have applied to the entire West without any Ohio or Missouri compromise, was only a corollary to his main proposition. The fugitive-slave clause, introduced by the consent of the North into the noble Ordinance of 1787, was perhaps another corollary; but it was not drawn by Jefferson. The original idea of a compact grew, according to principles of natural selection, from its Congressional environment. The representatives of Virginia introduced a saving clause in favor of the laws and customs of the French villagers beyond the Ohio, who had "professed themselves citizens of Virginia." Massachusetts, through the legal knowledge of Nathan Dane and the diplomacy of Dr. Cutler, provided for the welfare of her colonists by incorporating principles from her own Constitution of 1780, which, like all State governments in America at that time, was based upon old English institutions, the Bill of Rights, and the Common Law. Such was the origin of the Ordinance of 1787—not a sudden creation, but a slow, historic growth, the product of many minds and many interests working toward a common end.

gress have undertaken to do more: — they have proceeded to form new States; to erect temporary governments; to appoint officers for them; and to prescribe the conditions on which such States shall be admitted into the confederacy. All this has been done: and done *without the least color of constitutional authority.* Yet no blame has been whispered: no alarm has been sounded. A great and independent fund of revenue is passing into the hands of a single body of men, who can raise troops to an indefinite number, and appropriate money to their support for an indefinite period of time . . . . . I mean not by anything here said to throw censure on the measures which have been pursued by Congress. I am sensible they could not have done otherwise. The public interest, the necessity of the case, imposed upon them the task of overleaping their constitutional limits."[1]

Madison here reveals the true basis of political sovereignty. Public good and the necessities of the territorial situation are the sovereign law of every political commonwealth. The fundamental idea of a republic is the common good (respublica) and the radical notion of politics (πόλις) is government of *civil* society, which is first united by material interests. The good old word *commonwealth* best expresses to the English mind not only the controlling principle of state-life which is the common weal, but the necessary condition of political existence which is the possession of a common country or territorial domain.

It was the public interest of the original States in the western lands, as a means of satisfying army claims and defraying the expenses of the war, which held together thirteen *de facto* sovereign powers after independence had been achieved and the recommendations of Congress had become a laughing-stock. The Confederation, in itself, was a mere league and Congress little more than a committee of public

[1] Federalist No. 38., Jan. 15, 1788. (Edition of J. C. Hamilton, 1875, p. 299.)

safety appointed by thirteen colonies which desired territorial independence in common but self-government and state-sovereignty for each. When the war was over, these jealous powers would have fallen apart if there had been no other influence than Congress to hold them together. It was only external pressure which had united the colonies, and without *permanent territorial interests* Congress would have been, indeed, "a shadow without the substance," as Washington termed it, and the country, "one nation to-day and thirteen to-morrow," as best suited the purposes of individual States. But out of this sovereign relation which was established between the United States and their public domain, was developed a truly national sovereignty. Madison[1] speaks of this new manifestation of energy as "an excrescent power," growing "out of the lifeless mass" of the Confederation, and yet he justifies the acts of Congress for the government of the western territory, on grounds of necessity and of the public good. A surer foundation for national sovereignty has never been discovered. Political Science no longer defends the Social Contract as the basis of government. The best writers of our day reject those atomistic theories of State which would derive national sovereignty from compact, or arithmetical majorities, and not from the commonwealth, or the solidarity of public interests.

Government is derived from the living necessities and united interests of a people. The State does not rest upon compact or written constitutions. There is something more fundamental than delegated powers or chartered sovereignty. The State is grounded upon that community of material interests which arises from the *permanent* relation of a people to some fixed territory. Government can exist among men who have no enduring interest in land, as, for example, among nomadic hordes, but States are territorial, although capable of organic development. Dynasties may change and the principles of Government become wholly republican, but Eng*land* will

[1] Federalist, No. 38., p. 299.

endure so long as a sovereign and abiding relation subsists between the English people and their island domain.[1] The element of continuity in every state life is directly dependent upon this sovereign relation between a people and some fixed territory. Remove a people from their domain and you destroy their State. If the Puritans of Massachusetts had accepted the invitation[2] of Lord Baltimore and removed to Maryland, it is to be presumed that Plymouth Rock and the Bay State would have fallen into oblivion or acquired a totally different place in New England history. The Pilgrims' Compact is often cited as an example of the "Social Contract," but if the people of New England had accepted Cromwell's advice[3] and migrated to tropical Jamaica, it is not likely that their compact would have established a *New England* in that fertile island, which pours its wealth so "prodigally into the lap of industry." Territorial influences enter so largely into the constitution and political life of a State that we cannot conceive of a political commonwealth as existing independently of certain material conditions.[4] It is, therefore, but a partial truth when the lawyer-poet[5] says:

> Men who their duties know,
> But know their rights and knowing dare maintain,
> * * * * * * *
> These constitute a state.

Although a free and sovereign people is undoubtedly the animating life of the American Republic, yet that life has a

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[1] Das Staatsgebiet ist entschieden für den Staat und seine Entwickelung von fundamentaler Bedeutung, was schon daraus hervorgeht, dass man gewöhnlich in der Benennung den Staat mit demselben identificirt. Winkler, Das Staatsgebiet. Eine cultur-geographische Studie, p. 3, Leipzig, 1877.

[2] Bancroft, History of the United States, I., p. 253.

[3] Ibid., p. 446.

[4] Der Staat . . . . geht aus natürlichen Bedingungen hervor; physische Verhältnisse sind die Grundlage seiner Existenz und Entwickelung. Winkler, Das Staatsgebiet, p. 3.

[5] Sir William Jones, first translator of the Laws of Manu, and a pioneer of Comparative Jurisprudence as well as of Comparative Philology.

material basis of which writers on American constitutional history have taken too little cognizance. No State without a people; no State without land:[1] these are the fundamental principles of political science and were recognized as early as the days of Aristotle.[2] The common interest of all the States in our western territory was the first truly national commonwealth upon American shores, for it bound these States together into a *permanent* political union and established a sovereign relation between the United States and a territorial domain. Without public interests of a solid and lasting character, the military union of thirteen *de facto* sovereign powers would never have grown into a national union with inherent rights of sovereignty. "Constitutions are not made," says Sir James Macintosh, "they grow." The American Republic is the product, not of concessions or concensus, but of *development from the existing relations of things.* Political interests of a lasting character were entailed upon the Confederation by the possession of a territorial commonwealth. "From the very origin of the government," said Daniel Webster in his first great speech on the Public Lands in answer to Mr. Hayne of South Carolina, "these western lands and the just protection of those who had settled or should settle on them, have been the leading objects in our policy."[3]

But we have seen that even before the adoption of our present form of government, these western lands constituted the most vital and absorbing question in American politics. The acquisition of a territorial commonwealth by these States was the *foundation of a permanent union;* it was the first solid arch upon which the framers of our Constitution could build.

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[1] Bluntschli, *Statslehre für Gebildete*, p. 12. "Kein Stat ohne Land." See also *Lehre vom Modernen Stat.* I., p. 15. (Stuttgart, 1875.)

[2] Aristotle, Polit. III., cap. 5, 14.

[3] Webster's Works, III., p. 251.

When now we consider the practical results arising from Maryland's prudence in laying the key-stone to the old Confederation only after the land claims of the larger States had, through her influence, been placed upon a national basis, we may say, with truth, that it was a National Commonwealth which Maryland founded. It seems strange that so little attention has been devoted to the question of Public Lands[1] and their influence upon the constitutional development of this country. In view of the fact that the greatest conflict in American politics has been for the organization of the West upon the principles of the Ordinance of 1787, it would seem as though the subject of the Territorial Commonwealth of the American Union might justly demand from our students of history something more than "the cold respect of a passing glance."

The Ordinance of 1787 is but the legal outcome of Maryland's successful policy in advocating National Sovereignty over the Western Lands. The leading principles of this Ordinance are now recognized in all parts of our country, but those principles were long ago approved of by Maryland, although in a somewhat singular manner.

In 1833, when the vessel sailed which carried to western Africa the emigrants who were to establish, under the auspices of the Maryland State Colonization Society, the colony of Maryland in Liberia, at Cape Palmas, the agent of the society took with him two documents, the one a Constitution, containing a Bill of Rights, and the other an Ordinance for the

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[1] The author is indebted to his former teacher, Dr. Emil Otto, of Heidelberg, now deceased, for a copy of a dissertation on *Die Public Lands der Vereinigten Staaten von Nord-Amerika. Inaugural-Dissertation zur Erlangung der Doctorwürde von der juristischen Facultät der Friedrich-Wilhelms-Universität zu Berlin, . . . von James P. Foster aus New-York.* Berlin, 19 April, 1877. Although Dr. Foster has anticipated his countryman and former fellow-student, by scientifically investigating the question of "Public Lands," still, as a lawyer, he has considered *legal relations* rather than *historic processes*, and has not touched at all upon the points made in this article.

government of the territory about to be acquired. The work of preparing these instruments was done by Mr. John H. B. Latrobe, then the corresponding secretary of the society and one of its most active members. The animating principles of these instruments, and, to some extent, their very form and substance, were furnished by the famous Ordinance of 1787. When the Constitution and Ordinance were reported to the society by the secretary, they were unanimously adopted without alteration. Subsequently a committee consisting of Mr. Latrobe, Mr. Evans, and Mr. Andersen, prepared a code of laws for the redress of injuries and for the regulation of property, together with a collection of legal forms, which have been in use up to the present time. The work of this committee was done by Mr. Evans.[1]

From the remarks of the President of the Historical Society after this paper had been read, it would appear that he and his colleagues in the Maryland Colonization movement, scarcely realized how consistent their action was with the ancient policy of this State, when the legal outcome of that policy, or the Ordinance of 1787, was thus unanimously adopted for the government of Maryland's own Colony in Liberia. Extremes meet in History as well as in Politics, and the present age could read a γνῶθι σαυτὸν, or 'know thyself,' in the records of the past. It was the custom of Greek colonists, setting out from Athens or Corinth, to take with them fire from the prytaneum of their native city, as emblematic of the political life which they were to kindle upon some distant shore. Unlike the Greek colonists in political genius or capacity for freedom, but like them in the desire, common to all colonists, of improving their material condition,

[1] See Memoir of Hugh Davey Evans, LL. D. By the Rev. Hall Harrison, M. A. Hartford: printed by the Church Press Company, 1870, p. 159. For the two instruments first mentioned and for the code of laws, see Constitution and Laws of Maryland in Liberia. Baltimore, 1847. The Ordinance of 1787 is printed in the Land Laws of the United States, pp. 356–61, and also in the Old Journals of Congress, IV., pp. 752–54.

the emigrants to Liberia from this State gladly received from Maryland a system of equal laws. Who shall say that the Ordinance which was given them for their future government was wholly a borrowed fire, when the original Ordinance of 1787 is itself the historic product of Maryland's ancient zeal in founding a National Commonwealth.

WASHINGTON'S INTEREST IN WESTERN LANDS.

Perkins, in his Annals of the West, says that Washington was one of the foremost speculators in Western Lands after the close of the French and Indian War.[1] The Washington-Crawford Letters, which were edited in a thorough and painstaking manner by C. W. Butterfield,[2] throw a strong light upon the enterprising nature of that man who was, assuredly, "first in peace" and who, even if the Revolution had not broken out, would have become the most active and representative spirit in American affairs. Washington's plans for the colonization of his western lands, by importing Germans from the Palatinate, are but an index of the direction his business pursuits might have taken, had not duty called him to command the Army and afterwards to head the State. But the influence of some of these early plans may be traced in Washington's later measures of public policy and in his ideas for the internal improvement of his country. Reserving, however, for another paper Washington's pioneer efforts for opening up communication with the West, let us examine a few portions of the documentary evidence relating to his early land speculations. There is nothing to Washington's discredit in any of the Washington-

[1] Perkins, Annals of the West, p. 110.

[2] Washington-Crawford Letters concerning Western Lands. By C. W. Butterfield, Cincinnati: Robert Clarke & Co., 1877.

Crawford Letters, but the following extracts may afford an interesting revelation of the worldly wisdom of the Father of his Country.

In Washington's letter to his friend, Crawford,[1] dated September 21, 1767, the whole scheme of taking up the bounty lands is broached: "I offered in my last to join you in attempting to secure some of the most valuable lands in the King's part, which I think may be accomplished after awhile, notwithstanding the proclamation that restrains it at present, and prohibits the settling of them at all; for I can never look upon that proclamation in any other light (but this I say between ourselves) than as a temporary expedient to quiet the minds of the Indians. It must fall, of course, in a few years, especially when those Indians consent to our occupying the lands. Any person, therefore, who neglects the present opportunity of hunting out good lands, and in some measure marking and distinguishing them for his own, in order to keep others from settling them, will never regain it. If you will be at the trouble of seeking out the lands, I will take upon me the part of securing them, as soon as there is a possibility of doing it, and will, moreover, be at all the cost and charges of surveying and patenting the same. You shall then have such a reasonable proportion of the whole as we may fix upon at our first meeting; as I shall find it necessary, for the better furthering of the design, to let some of my friends be concerned in the scheme, who must also partake of the advantages.

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[1] William Crawford was a Virginia officer, who had served in the French and Indian War and who, in early life, had learned the art of surveying from Washington. Crawford removed to the back country in 1766 and settled at "Stewart's Crossing," on the Youghiogheny river. In the following year, Washington began a correspondence with his old friend which lasted until 1781. The particulars concerning Crawford's awful death by torture, at the hands of Indian savages, are given in "Crawford's Campaign against Sandusky in 1782," by C. W. Butterfield, the editor of the above correspondence. See also Perkins, Annals of the West, pp. 246–7.

"By this time it may be easy for you to discover that my plan is to secure a good deal of land. You will consequently come in for a very handsome quantity; and as you will obtain it without any costs or expenses, I hope you will be encouraged to begin your search in time. I would choose, if it were practicable, to get large tracts together; and it might be desirable to have them as near your settlement or Fort Pitt as they can be obtained of good quality, but not to neglect others at a greater distance, if fine bodies of it lie in one place. It may be worthy of your inquiry to find out how the Maryland back line will run,[1] and what is said about laying off Neal's grant. I will enquire particularly concerning the Ohio Company, that we may know what to apprehend from them. For my own part, I should have no objection to a grant of land upon the Ohio, a good way below Pittsburgh, but would first willingly secure some valuable tracts nearer at hand.

"I recommend, that you keep this whole matter a secret, or trust it only to those in whom you can confide, and who can assist you in bringing it to bear by their discoveries of land. This advice proceeds from several very good reasons, and, in the first place, because I might be censured for the opinion I have given in respect to the King's proclamation, and then, if the scheme I am now proposing to you were known, it might give the alarm to others, and, by putting them upon a

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[1] In regard to this point, Crawford replies, September 29, 1767: "There is nothing to be feared from the Maryland back line, as it does not go over the mountain." (Washington-Crawford Letters, p. 10.) There had been a controversy, as we learn from Butterfield, between Maryland and Virginia, respecting the exact whereabouts of the said back line, for, in the Maryland charter, it was defined as a meridian, extending from the "first fountain of the Potomac" to the northern limits of *Terra Mariæ*. Maryland claimed the "first fountain of the *north* branch of the Potomac, as the starting-point of this meridian line, whereas Virginia insisted that the head of the *south* branch should be taken, for this would infringe, to a less degree, upon the latter's western territory." Crawford meant that, admitting Maryland's claim, the back line could not be run west of the mountains.

plan of the same nature, before we could lay a proper foundation for success ourselves, set the different interests clashing, and, probably, in the end, overturn the whole. All this may be avoided by a silent management, and the operation carried on by you under the guise of hunting game, which you may, I presume, effectually do, at the same time you are in pursuit of land. When this is fully discovered, advise me of it, and if there appears but a possibility of succeeding at any time hence, I will have the lands immediately surveyed, to keep others off, and leave the rest to time and my own assiduity.

"If this letter should reach your hands before you set out, I should be glad to have your thoughts fully expressed on the plan here proposed, or as soon afterwards as convenient; for I am desirous of knowing in due time how you approve of the scheme. I am, etc."[1]

The following extract from Crawford's answer to the above letter shows that the project suited him:

"With regard to looking out land in the King's part, I shall heartily embrace your offer upon the terms you proposed; and as soon as I get out and have my affairs settled in regard to the first matters proposed, I shall set out in search of the latter. This may be done under a hunting scheme (which I intended before you wrote to me), and I had the same scheme in my head, but was at a loss how to accomplish it. I wanted a person in whom I could confide — one whose interest could answer my ends and his own. I have had several offers, but have not agreed to any; nor will I with any but yourself or whom you think proper."

In 1770, Washington crossed the Alleghanies and visited his friend Crawford, to see how the latter had succeeded in spying out the land. Washington's Journal of his tour to the Ohio is very interesting and contains the most minute details as to his impressions concerning the western country.

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[1] Washington-Crawford Letters, pp. 3–5, or Sparks' Life and Writings of Washington, II., pp. 346–50.

Washington left his home at Mount Vernon on the fifth of October and arrived at Crawford's on the morning of the thirteenth. The following selections from his Journal will suffice to illustrate its tenor:

13th.—Set out about sunrise; breakfasted at the Great Meadows—thirteen miles—and reached Captain Crawford's about five o'clock. The land from Gist's to Crawford's is very broken, although not mountainous; in spots exceedingly rich, and, in general, free from stones. Crawford's is very fine land; lying on the Youghiogheny, at a place commonly called Stewart's Crossing.

14th.—At Captain Crawford's all day. Went to see a coal mine, not far from his house, on the banks of the river. The coal seemed to be of the very best kind, burning freely, and abundance of it.

15th.—Went to view some land, which Captain Crawford had taken up for me near the Youghiogheny, distant about twelve miles. This tract, which contains about one thousand six hundred acres, includes some as fine land as ever I saw, and a great deal of rich meadow. It is well watered, and has a valuable mill-seat, except that the stream is rather too slight, and, it is said, not constant more than seven or eight months in the year; but, on account of the fall, and other conveniences, no place can exceed it. In going to this land, I passed through two other tracts, which Captain Crawford had taken up for my brothers, Samuel and John. I intended to have visited the land, which Crawford had procured for Lund Washington, this day also, but, time falling short, I was obliged to postpone it. Night came on before I got back to Crawford's. . . . . The lands, which I passed over to-day, were generally hilly, and the growth chiefly white oak, but very good notwithstanding; and, what is extraordinary, and contrary to the property of all other lands I ever saw before, the hills are the richest land; the soil upon the sides and summits of them being as black as a coal, and the growth walnut and cherry. The flats are not so rich, and a good deal more mixed with stone.

[The lands above described were not taken up as bounty lands, but under patents issued by the land-office of Pennsylvania. On the twentieth of October, Washington and Crawford, with a small party of white men and Indians, started on a trip down the Ohio, to view the lands on that river and on the Great Kanawha, which Washington intended to secure for himself and his friends, under the proclamation of 1763, which authorized the granting of two hundred thousand acres of bounty land to officers and soldiers who had served in the French and Indian War. The party reached the confluence of the Great Kanawha and Ohio rivers in twelve days from Pittsburgh.]

November 1st.—Before eight o'clock we set off with our canoe up the river, to discover what kind of lands lay upon the Kanawha. The land on both sides this river, just at the mouth, is very fine; but on the east side, when you get towards the hills, which I judge to be about six or seven hundred yards from the river, it appears to be wet, and better adapted for meadow than tillage. . . . . We judged we went up the Kanawha about ten miles to-day. . . . . .

2nd.—We proceeded up the river, with the canoe, about four miles farther, and then encamped, and went hunting; killed five buffaloes and wounded some others, three deer, &c. This country abounds in buffaloes and wild game of all kinds, and also in all kinds of wild fowl, there being in the bottoms a great many small, grassy ponds, or lakes, which are full of swans, geese, and ducks of different kinds. . . . . .

3d.—We set off down the river, on our return homeward, and encamped at the mouth. At the beginning of the bottom above the junction of the rivers, and at the mouth of the branch on the east side, I marked two maples, an elm, and hoop-wood tree, as a corner of the *soldiers' land* (if we can get it), intending to take all the bottom from hence to the rapids in the Great Bend into one survey. I also marked at the mouth of another run, lower down on the west side, at the lower end of the long bottom, an ash and hoop-wood for the

beginning of another of the soldiers' surveys, to extend up so as to include all the bottom in a body on the west side. In coming from our last encampment up the Kanawha, I endeavored to take the courses and distances of the river by a pocket compass, and by guessing.

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December 1st.—Reached home, having been absent nine weeks and one day.[1]

The practical results of the above expedition appear in the following advertisement in the Maryland Journal and Baltimore Advertiser of August 20, 1773:

MOUNT VERNON IN VIRGINIA, *July* 15, 1773.

The subscriber having obtained patents for upwards of twenty thousand acres of land on the Ohio and Great Kanawha (ten thousand of which are situated on the banks of the first-mentioned river, between the mouths of the two Kanawhas, and the remainder on the Great Kanawha, or New River, from the mouth or near it, upwards, in one continued survey) proposes to divide the same into any sized tenements that may be desired, and lease them upon moderate terms, allowing a reasonable number of years rent free, provided, within the space of two years from next October, three acres for every fifty contained in each lot, and proportionably for a lesser quantity, shall be cleared, fenced, and tilled; and that, by or before the time limited for the commencement of the first rent, five acres of every hundred, and proportionably, as above, shall be enclosed and laid down in good grass for meadow; and moreover, that at least fifty fruit trees for every like quantity of land shall be planted on the Premises. Any persons inclinable to settle on these lands may be more fully informed of the terms by applying to the subscriber, near Alexandria, or in his absence to Mr. Lund Washington; and would do well in communicating their

[1] Writings of Washington, II., pp. 516–34.

intentions before the 1st of October next, in order that a sufficient number of lots may be laid off to answer the demand.

As these lands are among the first which have been surveyed in the part of the country they lie in, it is almost needless to premise that none can exceed them in luxuriance of soil, or convenience of situation, all of them lying upon the banks either of the Ohio or Kanawha, and abounding with fine fish and wild fowl of various kinds, as also in most excellent meadows, many of which (by the bountiful hand of nature) are, in their present state, almost fit for the scythe. From every part of these lands water carriage is now had to Fort Pitt, by an easy communication; and from Fort Pitt, up the Monongahela, to Redstone, vessels of convenient burthen, may and do pass continually; from whence by means of Cheat River, and other navigable branches of the Monongahela, it is thought the portage to Potowmack may, and will, be reduced within the compass of a few miles, to the great ease and convenience of the settlers in transporting the produce of their lands to market. To which may be added, that as patents have now actually passed the seals for the several tracts here offered to be leased, settlers on them may cultivate and enjoy the lands in peace and safety, notwithstanding the unsettled counsels respecting a new colony on the Ohio; and as no right money is to be paid for these lands, and quitrent of two shillings sterling a hundred, demandable some years hence only, it is highly presumable that they will always be held upon a more desirable footing than where both these are laid on with a very heavy hand. And it may not be amiss further to observe, that if the scheme for establishing a new government on the Ohio, in the manner talked of, should ever be effected, these must be among the most valuable lands in it, not only on account of the goodness of soil, and the other advantages above enumerated, but from their contiguity to the seat of government, which more than probable will be fixed at the mouth of the Great Kanawha.

GEORGE WASHINGTON.

These lands were patented by Lord Dunmore, Governor of Virginia, as we know from Washington's own statement to the Reverend John Witherspoon, in a letter dated March 10, 1784,[1] in which he describes his western lands. From inferential evidence we are inclined to think that Washington obtained these patents before any general issue of land grants had been made to the officers and soldiers. We know that Washington entered the claims of all those who applied to him for assistance, and that too as early as 1771,[2] but the general tenor of the Washington-Crawford Letters from that date up to January, 1774, indicate that no official grants had been issued.[3] In a letter to Crawford, dated September 25, 1773, Washington says, "I would recommend it to you to use dispatch, for, depend upon it, if it be once known that the Governor will grant patents for these lands, [below the Scioto,] the officers of Pennsylvania, Maryland, Carolina, etc., will flock there in shoals, and every valuable spot will be taken up contiguous to the river, on which the lands, unless it be where there are some peculiar properties, will always be most valuable."[4] It seems that Washington was mistaken in regard to the governor's intention, for, in a letter dated September 24, 1773, one day previous to the date of the above, Dunmore declared positively to Washington, that he did not mean to grant any patents on the western waters.[5] And yet, from the above advertisement, it is clear that Washington himself already held patents on western waters for upwards of twenty thousand acres.[6] It will be noticed, however, that Washington does not speak of these lands as patented under

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[1] Writings of Washington, XII., p. 264, or Washington-Crawford Letters, p. 77.

[2] Writings of Washington, II., p. 367.

[3] Washington-Crawford Letters, *e. g.* 23, 25, 26, 29, 33, 35, 40.

[4] Ibid., p. 33.

[5] Writings of Washington, II., p. 379.

[6] Some light on this fact may, perhaps, be seen in the Writings of Washington, II., p. 367.

the proclamation of 1763, and yet, from allusion to them in his own letters, we know that they were thus obtained as bounty lands,[1] and that Washington bought up the claims of his fellow-officers to a considerable extent. The following letter to Crawford affords positive evidence on this point:

MOUNT VERNON, *September* 25, 1773.

"DEAR SIR:—I have heard (the truth of which, if you saw Lord Dunmore in his way to or from Pittsburgh, you possibly are better acquainted with than I am) that his Lordship will grant patents for lands lying below the Scioto, to the officers and soldiers who claim under the proclamation of October, 1763. If so, I think no time should be lost in having them surveyed, lest some new revolution should happen in our political system. I have, therefore, by this conveyance, written to Captain Bullitt, to desire he will have ten thousand acres surveyed for me; five thousand of which I am entitled to in my own right; the other five thousand, by purchase from a captain and lieutenant.

* * * * * * * *

Old David Wilper, who was an officer in our regiment, and has been with Bullitt running out land for himself and others, tells me that they have already discovered four salt springs in that country; three of which Captain Thompson has included within some surveys he has made; and the other, an exceedingly valuable one, upon the River Kentucky, is in some kind of dispute. I wish I could establish one of my surveys there; I would immediately turn it to an extensive public benefit, as well as private advantage. However, as four are already discovered, it is more than probable there are many others; and if you could come at the knowledge of them by means of the Indians, or otherwise, I would join you in taking them up in the name or names of some persons who have a right under the proclamation, and whose right we can

[1] Washington-Crawford Letters, p. 78.


Plat of the Survey
on the little Kanhawa
28400 Acres
made in 1773
N 65 W 360 P BYPROTRACTION
THIS SURVEY CONTAINS 28400 ACRES
FORMER SURVEY
OHIO RIVER CROWDED WITH ISLANDS
LITTLE KANAWAY RIVER
This Survey 28400 Acres
is Situated on the Waters of
Col. Richd. Lee & Partners for 9000
Col. Washington 9000
The Representatives of Col. Thos. 5000
Andrew Lewis, Esq. & Mark,
Anthony & do Lefs Part
Thos. Lewis, & Charles,
Thos. Smith, Alex. Hunter,
Wm. Dun deceased. & Others
Proprietary 400 Acres each 4900
28400
Quan of 1400
contd 28000

be sure of buying, as it seems there is no other method of having lands granted; but this should be done with a good deal of circumspection and caution, till patents are obtained."[1]

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Exactly how much land Washington succeeded in getting patents for, it is difficult to say. From his letters to John Witherspoon and Presley Neville we know that he obtained, at least, 32,373 acres under the signature of Lord Dunmore.[2] Of this amount, ten thousand acres were doubtless secured about the beginning of the year 1774, when Lord Dunmore began to grant patents officially. In the preceding letter it will be noticed that Washington speaks of his desire to have that quantity of land surveyed. Reckoning the latter with the "upwards of twenty thousand acres" which Washington advertised in the Maryland Journal and Baltimore Advertiser, we can fairly account for the above 32,373 acres. It is not improbable that Washington owned at one time, even a larger amount of land than this, which he speaks of in the above letter to Presley Neville as still possessing in 1794.

In the historical library at the Johns Hopkins University there may be seen an original plat of survey, executed, probably, by Crawford, but, possibly, by Washington himself (for it contains some of his own handwriting), of 28,400 acres of land on the *Little Kanawha* river, patented in the name of Captain Stobo's heirs, of Captain Vanbraam, and of several other parties.[3] We have discovered allusions to these

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[1] Writings of Washington, II., pp. 375–77, or Washington-Crawford Letters, pp. 29–31.

[2] Writings of Washington, XII., 264, 317, or Washington-Crawford Letters, pp. 77, 82.

[3] This map of survey, formerly the property of Reverdy Johnson, Esq., was first recognized by President Gilman as containing some of George Washington's own handwriting, and, through the courtesy of Mr. Johnson, this map, now framed, graces the Map Bureau at the University. Professor J. E. Hilgard, of the U. S. Coast survey, has called attention to the careful and accurate method of protraction employed in this plat of survey.

two officers in the Writings of Washington (II., pp. 365, 368,) and know that they entered their claims, along with those of other friends and acquaintances of Washington, in the year 1771, but these two officers were out of the country and, as Washington complained, had not advanced their share of the expenses attending the surveys. It is highly probable that Captain Stobo (or his heirs) and Captain Vanbraam became tired of waiting for patents and sold out their claims to Washington, as did several gentlemen in this country. But we have more positive evidence that Washington owned property at the mouth of the Little Kanawha. And, in this connection, Lord Dunmore's interest in western lands must be slightly exposed. There is some obscurity attached to the royal governor's conduct and prudent delay in granting patents for the bounty lands, but there is no reason for suspecting Washington, for we know that he did his utmost to prevail upon Dunmore and his predecessor, Lord Botetourt, to hasten the grants.[1]

In the spring of 1773, we find Dunmore making arrangements with Washington for a trip over the mountains. The latter expresses his willingness to accompany the governor, about the first of July, "through any and every part of the western country" which Dunmore might think proper to visit. Crawford is recommended as a guide, because of "his superior knowledge of the country." Washington was pre-

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It will be noticed that the course of the river is indicated by the straight lines of survey and not by curves. The words "Plat of the Survey of the Little Kanawha, 28,400 acres, made in 1773," are written on the back of the original map, but have been photographed and inserted in the *fac-simile* for the sake of showing the whole.

[1] See Letters to Lord Botetourt, the Earl of Dunmore, and George Mercer, 1770–1. Writings of Washington, II., pp. 355, 359, 365, 378. This correspondence ought to be published in every collection of documents relating to Western Lands. It would not be amiss in the Appendix to Butterfield's next edition, for these letters set Washington's character in a very clear light as regards honorable intentions by his fellow-officers.

vented, however, by a family affliction,[1] from carrying out the project, but Dunmore went without him, and, very naturally, visited Crawford in his western home, "the occasion being turned to profitable account," Butterfield thinks, "by both parties: by the Earl, in getting reliable information of desirable lands; by Crawford, in obtaining promises for patents for such as he had sought out and surveyed." These promises on Dunmore's part related to lands *at the mouth of the Little Kanawha.* This is evident from two passages in Crawford's letters to Washington: "In my last letter to you I wrote you that Lord Dunmore had promised me that in case the new government did not take place before he got home, he would patent these lands for me if I would send him the draft of the land I surveyed on the mouth of the Little Kanawha."[2] This passage is ambiguous, but it settles one point: the proposed draft of land was *at the mouth of the Little Kanawha.* The second passage, which is from a subsequent letter, clears up the ambiguity: "Lord Dunmore promised me most faithfully, that when I sent him the draft of land *on the Little Kanawha* that he would patent it *for me;* and in my letter to you I mentioned it, but have not heard anything from you relating to it."[3]

Now comes Washington's relation to the lands at the mouth of the Little Kanawha. The passage from Crawford, which was quoted first, is in immediate connection with the following offer: "Now, as my claim as an officer cannot include the whole, if you will join as much of your officer's claim as will take all of the survey, you may depend I will make any equal division you may propose. I told Lord Dunmore the true state of the matter." The passage which was quoted in the second place, is immediately preceded by this statement: "He

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[1] The death of Miss Custis, daughter of Mrs. Washington by her former marriage. See Sparks' Life and Writings of Washington, II., p. 378.

[2] Washington-Crawford Letters, p. 35.

[3] Ibid., p. 40.

[Doctor Connolly, Lord Dunmore's agent] further told me that you had applied for my land as an officer, and could not obtain it without a certificate, or my being present; which puts me at a loss, in some measure, how to take it, especially as you have not written on that head." In this and in the succeeding sentence, above quoted, Crawford manifests some anxiety in regard to securing patents on the lands at the mouth of the Little Kanawha, having heard nothing from Washington on that score.

And now comes the conclusion of the matter, as far as our evidence goes. In a letter to Washington, dated September 20, 1774, and, therefore, after patents had been issued in sufficient quantities to cover all purposes of speculation, Crawford says: "I have, I believe, as much land lying on the Little Kanawha as will make up the quantity you want, that I intended to lay your grants on; *but if you want it, you can have it*, and I will try to get other land for that purpose" [up river, as he proceeds to describe]. The sense of this passage is somewhat ambiguous, but, in the light of the foregoing facts, we think it must be interpreted as follows: Crawford had surveyed a large tract of land at the mouth of the Little Kanawha; he had offered to share it with Washington; the latter had applied for Crawford's patent and had secured certain grants in which he and Crawford were to have a joint interest, which grants Crawford had intended to lay upon the lands at the mouth of the Little Kanawha; but Washington, for some reason, desired to make up a quantity of land for himself, in one tract, and Crawford tells him that if he wants the whole tract at the mouth of the Little Kanawha, he can have it, and he himself will lay warrants, in which he and Washington have a joint interest, upon a certain parcel of land "fifteen or twenty miles up that river, on the lower side, and [which] is already run out in tracts of about three thousand and some odd acres; others about twenty-five hundred acres; all well marked and bounded." This interpretation is borne out by the fact that Crawford's name does not appear in

the list of patentees, which was written by Washington himself on the above-mentioned map of survey, although the tract at the mouth of the Little Kanawha was certainly the one which Crawford originally surveyed for himself and which he desired to have Washington join him in securing. It is possible that the words "Former survey," which are to be seen in the preceding plat, have reference to Crawford's first survey of the locality, a draft of which he sent to Lord Dunmore. It is highly probable that Washington bought up the claims of all the parties, in whose names the patents for the land at the mouth of the Little Kanawha were drawn, as the list itself shows, and secured the entire 28,400 acres for himself in one tract. Washington's practice of attaching purchased warrants to Crawford's land surveys is made evident by the following passage from one of Crawford's letters, dated March 6, 1775: "Inclosed you have two plats which you must fix warrants to yourself and the dates also of the warrants."[1] Whether Crawford had obtained from Lord Dunmore, before that date, any regular commission as surveyor for a district on the Ohio, is not clear. We know, however, that Lord Dunmore promised to serve Crawford in that way if it should be in his power,[2] and Crawford wrote to Washington, December 29, 1773, concerning this very matter: "If you can do any thing for me, pray do; as it will then be in my power to be of service to you, and myself too, and our friends."[3] A few months previous to the above date, Washington had procured for Crawford the position of surveyor for the Ohio Land Company.[4] Crawford seems to have been a very enterprising character. If *he* could have managed the

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[1] Washington-Crawford Letters, p. 59. As Washington did not go west in 1773, it is probable that he affixed the names of Stobo, Vanbraam, and the rest, to a plot that Crawford had sent him.

[2] Ibid., pp. 39, 40.

[3] Ibid., p. 39.

[4] Ibid., p. 33.

patenting of the bounty lands, he would doubtless have served himself, Washington, and "our friends" far more effectually than did Lord Dunmore.[1] In a letter to Washington dated November 12, 1773, Crawford hints at taking up the entire two hundred thousand acres: "I wrote you," he says, "relating to the upper survey on the Great Kanawha. I think you have not apprehended me in what I wanted. *There is the full quantity of land of two hundred thousand acres, and six hundred over and above.*" Butterfield says that Crawford's meaning at this point is not clear. At least the allusion to the two hundred thousand acres must have conveyed a tolerably clear concept to the speculative mind of Washington.

If Washington really owned at one time the above 28,400 acres in addition to the 32,373 acres which we have previously accounted for, this amount, together with his 10,000 acres of unpatented surveys, would make a sum total of 70,773 acres of western land, which he aspired to control. Considering the fact that his own claim as an officer was for but five thousand acres and that only two hundred thousand could possibly be granted to the officers and soldiers, it would certainly appear as though Washington meant to secure the lion's share, which, considering the circumstances and Lord Dunmore's conduct, no one could truly begrudge that enterprising man

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[1] There are strong reasons for believing that Lord Dunmore and his Council were materially interested not only in restraining the soldier's grants, but also in furthering the claims of certain land companies in which they had stock. Washington ascribes the backwardness of this Honorable Board, in recognizing the soldier's claims, to "other causes" than mere lukewarmness. (See Writings of Washington, II., p. 365.) It is stated, as a notorious fact, in the famous Virginia Remonstrance (see Hening, Virginia Statutes at Large, X., p. 558,) that Lord Dunmore was in league with "men of great influence in some of the neighboring states," for the purpose of securing, under cover of purchase from the Indians, large tracts of country between the Ohio and Mississippi. By the allusion to "neighboring states," Maryland is aimed at, for Virginians usually ascribed Maryland's zeal for the public good to the interested motives of individuals. The policy of *all* the smaller states and the sturdy persistance, as well as the united and thoroughly consistent action of Maryland, are not to be explained from the standpoint of individual interest.

who prevented Dunmore and his colleagues from buying up all the claims. Washington needs no defence after his own manly and straightforward statements to his friend George Mercer, concerning his efforts to secure the bounty lands for the officers and soldiers. "The unequal interest and dispersed situation of the claimants," he says, "make a regular coöperation difficult. An undertaking of this kind cannot be conducted without a good deal of expense and trouble; and the doubt of obtaining the lands, after the utmost efforts, is such as to discourage the larger part of the claimants from lending assistance, *whilst a few are obliged to wade through every difficulty, or relinquish every hope.* . . . What inducements have men to explore uninhabited wilds, but the prospect of getting good lands? Would any man waste his time, expose his fortune, nay, life, in such a search, if he has to share the good and bad with those that come after him? Surely not."[1]

It is necessary to add, in closing this essay on Washington's land speculations, that the Father of his Country did not realize as much as he had expected from his investment of time and money. His experience with western land seems to have been like that of many speculators of our own day. In a letter to Presley Neville, in 1794, he says: "From a long experience of many years, I have found distant property in land more pregnant of perplexities than profit. I have therefore resolved to sell all I hold on the western waters, if I can obtain the prices which I conceive their quality, their situation, and other advantages, would authorize me to expect." In this letter, Washington estimates some of his land at six dollars per acre, and other portions at four dollars. He says he once sold his 32,373 acres, on the Great Kanawha and Ohio rivers, for sixty-five thousand French crowns to "a French gentleman, who was very competent to the payment at the time the contract was made; but, getting a little embarrassed in his finances by the revolution in his country,

[1] Writings of Washington, II., pp. 365, 366.

by mutual agreement the bargain was cancelled." Washington declares also that he has lately been negotiating for the sale of his western property at three and one-third dollars per acre.[1] But the lands on the Great Kanawha alone were afterwards sold, conditionally, for two hundred thousand dollars, as we learn from the schedule of property appended to Washington's will. "If the terms of that sale are not complied with," Washington adds in a foot-note, "they [these lands] will command considerable more." A good idea of the vast extent of Washington's investments in land may be obtained from an examination of this schedule,[2] the details of which we have somewhat abridged. The schedule does not include the Mount Vernon estates which embrace six thousand acres, or the tracts on Little Hunting Creek and Four Mile Run, which, together, formed three thousand two hundred and twenty-seven acres; this home-property, comprising in all 9,227 acres, was reserved in family estates for Bushrod Washington and others. The estimates of the value of the following parcels were made by Washington himself, in 1799, and his heirs were directed to sell off this larger portion of his landed property.

LANDS IN VIRGINIA.

	Acres.	Value.
Loudoun County, Difficult Run, . .	300	$ 6,666
Loudoun and Fauquier, . . .	3,366	31,890
Berkeley, ...	22,236	44,720
Frederic, ...	571	11,420
Hampshire, ...	240	3,600
Gloucester, ...	400	3,600
Nansemond, near Suffolk, . . .	373	2,984
Great Dismal Swamp, dividend thereof,	[?]	20,000
Carried forward, . . .	27,486	$124,880

[1] Writings of Washington, XII., 318, or Appendix to the Washington-Crawford Letters, p. 82.

[2] Writings of Washington, I., pp. 581–2.

	Acres.	Value.
Brought forward, . . .	27,486	$124,880
Lands on the Ohio.		
Round Bottom, ...	587	
Little Kanawha, ...	2,314	
Sixteen miles lower down, . . .	2,448	
Opposite Big Bent, ...	4,395	
	9,744	$97,440
Lands on the Great Kanawha.		
Near the mouth, west, ...	10,990	
East side, above, ...	7,276	
Mouth of Cole River, ...	2,000	
Opposite thereto, ...	2,950	
Burning Spring, ...	125	
	23,341	$200,000
Lands in Maryland.		
Charles County, ...	600	3,600
Montgomery, ...	519	6,228
	1,119	$ 9,828
Lands in Pennsylvania.		
Great Meadows, ...	234	1,404
Lands in New York.		
Mohawk River, ...	1,000	6,000
Lands in Northwest Territory.		
On Little Miami, ...	3,051	15,255
Carried forward, . . .	65,975	$454,807

	Acres.	Value.
Brought forward, . . .	65,975	$454,807
LANDS IN KENTUCKY.		
Rough Creek, ...	5,000	10,000
Total, . . .	70,975	$464,807
LOTS IN WASHINGTON, . .		19,132
" " ALEXANDRIA, . .		4,000
" " WINCHESTER, . .		400
		$488,339

Thus,—to say nothing of the Mount Vernon estates, of the lands that Washington had previously disposed of in the Mohawk valley,[1] and elsewhere, of the 28,400 acres *at the mouth* of the Little Kanawha,[2] of the 10,000 acres of unpatented surveys lost by the Revolution, or of Washington's share in the Great Dismal Swamp,—thus we see, that he actually owned, in 1799, over 70,000 acres of land, which he had originally secured for speculative purposes alone.

These facts concerning the vast extent of Washington's landed interests are now for the first time brought into systematic shape and historic connection. They reveal the practical and intensely American spirit of the Father of our Country. It does not detract from Washington's true greatness for the world to know this material side of his character. On the contrary, it only exalts that heroic spirit which, in disaster, never faltered, and which, in success, would have no reward. To be sure, it brings Washington nearer the level of humanity to know that he was endowed with the passions common to men, and that he was as diligent in business as he

[1] Writings of Washington, I., p. 584.

[2] The claims of Stobo and Vanbraam were really purchased by Washington's London agent, as we have ascertained from a note in Irving's Life of Washington, I., p. 369.

was fervent in his devotion to country. It may seem less ideal to view Washington as a man rather than as a hero or statesman, but it is the duty of history to deal with great men as they actually are. Man lives for himself, as well as in and for the State, and the distinction of individual from patriotic motives is one of the necessary tasks of historical investigation.

Public spirit and private enterprise are the leading traits of the American people. This dualism of character constitutes the healthful vigor of our state life. The coëxistence in George Washington of the most earnest zeal for the public good and of the most active spirit of business enterprise, is but the prototype of the life of our nation, for, as a distinguished jurist and political philosopher has well said, DER STAT IST DER MANN IM GROSSEN (*l'état c'est l'homme*).[1] A proper balance between public and individual interests is the great problem of self-government, but public good, and not the individual will, must be the determining power in this adjustment. When the commonwealth rises paramount and supreme over such selfish strivings as those recorded in the history of the land controversy, then does the true soul of State assert its sovereign will. Necessity is the supreme law of nations as well as of men, and it springs, sometimes, full-armed into being from the most material of human interests. The real essence of Political Sovereignty we cannot explain. As Shakespeare says:

> "There is a mystery
> in the soul of State,
> Which hath an operation more divine
> Than breath or pen can give expressure to."[2]

Political Sovereignty has its prototype, however, in the public spirit and patriotism of the individual. Who can

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[1] J. C. Bluntschli: Lehre vom Modernen Stat, I., p. 25. Bluntschli was professor of public and international law at Heidelberg and *Président de l'Institut de Droit International.*

[2] Troilus and Cressida, Act III., Scene 3.

account for the generous nature of American citizens, or for that heroic spirit which sometimes creates whole armies of men, who are ready to sacrifice all their individual interests for some great cause? Americans are said to be the most practical people in the world, and they probably are. We even call the State "a machine," although it may be doubted if Americans really believe this political doctrine. Americans are far too practical to offer up their lives for the sake of a machine, or to drag a political juggernaut for the privilege of being crushed by its wheels. Public good, however, takes precedence of individual happiness. The State is surely as noble as the patriotism which leads men to die for it. Although *interest* is, without doubt, the material basis of political society, as it is of human action, yet there is an interest in Man, as well as in the State, which transcends self-interest and all personal or material aims. It seldom finds perfect expression, either in Man or in the State, but it is the glory of human nature that self-interest sometimes *does* find a sovereign complement in a spirit of self-sacrifice for the common good and for the welfare of others. Such was the self-sacrificing devotion of George Washington, when, at the outbreak of the Revolution, he received from Congress the commission of Commander-in-Chief of the American forces, and, standing in his place as member of the House from Virginia, uttered those memorable words: "I will enter upon the momentous duty, and exert every power I possess for the support of the glorious cause. But lest some unlucky event should happen, unfavorable to my reputation, I beg it may be remembered by every gentleman in the room, that I this day declare, with the utmost sincerity, I do not think myself equal to the command I am honored with. As to pay, sir, I beg leave to assure the Congress that, as no pecuniary consideration could have tempted me to accept this arduous employment, at the expense of my domestic ease and happiness, I do not wish to make any profit from it. I will keep an exact account of my

expenses. These I doubt not they will discharge, and that is all I desire."[1]

Washington's patriotism in the defense of American liberty needs no eulogy. On the twenty-third of December, 1783, he tendered his resignation to Congress, then in session at Annapolis, in a speech which has an abiding fame, as that of the American Cincinnatus. These are his concluding words: "Having now finished the work assigned me, I retire from the great theatre of action, and bidding an affectionate farewell to this august body under whose orders I have so long acted, I here offer my commission, and take leave of all the employments of public life."[2]

[1] Writings of Washington, III., p. 1. Compare with letter to Mrs. Washington, III., pp. 2–3.

[2] Writings of Washington, VIII., p. 505.

WASHINGTON'S INTEREST

IN THE

POTOMAC COMPANY.

Washington's activity in the service of his country did not end in 1783. We refer not to his subsequent career as President of the United States, after the adoption of the present Constitution in 1788, but to his public spirit in opening up the Great West to trade and commerce, and in laying the basis for our nation's policy in the matter of internal improvements. This is a chapter in Washington's life that is not so well known. Materials for this subject were first collected by Mr. Andrew Stewart, member of Congress from Pennsylvania, in a Report on the "Chesapeake and Ohio Canal," in 1826.[1] Some, but not all, of the Washington documents pertaining to this matter were re-published in Sparks' edition of the Writings of Washington. Mr. John Pickell, formerly one of the Directors of the Chesapeake and Ohio Canal Company, has worked over this material and has compiled fresh facts from official sources in a valuable monograph called, "A new chapter in the Early Life of Washington in connection with the narrative history of the Potomac Company."[2]

[1] Reports of Committees of the House of Representatives, First Session, Nineteenth Congress. Report No. 228.

[2] New York: D. Appleton & Co., 1856.

The connection of George Washington with schemes for opening communication between the Atlantic States and the Great West was broken by the Revolution. There is a report in George Washington's handwriting, dated as far back as 1754, stating the difficulties to be overcome in rendering the Potomac navigable.[1] This report was made by Washington on his return from a trip across the Alleghanies, as messenger from Governor Dinwiddie to the commandant of the French forces on the Ohio. Washington went up the Potomac to Will's creek,[2] or Fort Cumberland, and over the Alleghanies by the route which was afterwards taken by the unfortunate Braddock, in his expedition against the French and Indians, and which became known as Braddock's Road.[3] A route was afterwards mapped out by Washington, from Cumberland over the mountains to the Youghiogheny river, which was destined to become the great avenue of travel and western migration. The construction of the Cumberland turnpike was a national work.[4] Indeed it was called the *National Road*, and it must be regarded as one of the direct results of that policy of internal improvement, which, as we shall see, originated with Washington. The historic outcome of the Cumberland turnpike is, however, the Connellsville line, from Pittsburgh to Cumberland, of the Baltimore and Ohio Railroad.

There must be some germ for historical as for natural evolution. The Potomac scheme of George Washington contained in embryo about all that the present generation

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[1] Stewart's Report, p. 1. Sparks has not reprinted this document.

[2] Washington's journal of a tour over the Alleghany Mountains. Writings, II., p. 432.

[3] This route was originally discovered by Indians in the employ of Virginia and Pennsylvania traders. It was first opened by the Ohio Company in 1753. See Writings of Washington, II., p. 302.

[4] The Cumberland Road was completed to Wheeling in 1820, at a cost of $1,700,000. Hildreth, History of the United States, (1789–1821) III., p. 699.

could reasonably demand. In a letter to Thomas Johnson,[1] the first state-governor of Maryland, dated July 20, 1770, Washington suggests that the project of opening up the Potomac be "recommended to public notice upon *a more enlarged plan*" [i, e. passage to Cumberland and connection, by portage, with Ohio waters] "*as a means of becoming the channel of conveyance of the extensive and valuable trade of a rising empire.*[2]

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[1] Thomas Johnson, of Maryland, was the man who, in 1775, nominated George Washington for the office of Commander-in-Chief of the American army. See Writings of Washington, III., p. 480. He was one of the committee of correspondence for Maryland, in 1775, Samuel Chase, Charles Carroll of Carrollton, Charles Carroll, barrister, and William Paca, being among his colleagues. He was delegate to Congress from 1775–77, and Governor of Maryland from 1777–79. Lanman, in his Biographical Annals of the Civil Government of the United States, is surely in error in saying that Johnson left Congress to raise a small army with which, as commander, he went to the assistance of Washington *in New England.* Governor Johnson called out extra militia in 1777 "to defend our liberties," but Washington left New England and retreated from Long Island in 1776, the Maryland Line covering the retreat, after having saved Putnam's troops from destruction by charging six times, with the bayonet, upon the left wing of the British army and by the sacrifice of five devoted companies, of whom Washington said: "My God! what brave men must I this day lose!" Colonel Smallwood was the commander of these brave young men from Baltimore, although he did not take part in the engagement, being "absent on duty in New York." (Bancroft, IX., p. 88.) But though Governor Johnson did not go to Washington's relief, these two were ever the warmest friends, and, after the Revolution, often visited each other, now at Rose Hill, near Frederick, and now at Mount Vernon. Johnson was Justice of the Supreme Court of the United States from 1791–93, and, when, Jefferson left the Cabinet, was invited by Washington to become Secretary of State, but declined. John Adams was once asked how it was that so many Southern men took part in the Revolution, and he replied, that, if it had not been for such men as Richard Henry Lee, Thomas Jefferson, Samuel Chase, and Thomas Johnson, there never would have been any Revolution. See Lanman's Biographical Annals, "Thomas Johnson."

[2] This letter to Thomas Johnson of Maryland is not to be found in Sparks' collection of the Writings of Washington but in Stewart's Report, pp. 27–29. The idea advanced is of colossal import and only the present generation can realize its full significance.

Here is the *bahnbrechende Idee*, whose resistless strength has opened the vistas of our inland commerce, and whose colossal proportions are now revealed, not only in the Baltimore and Ohio, which is the direct historic outgrowth of the Potomac scheme, but in the whole system of communication between East and West. It is a surprising fact that George Washington not only first mapped and recommended that line, which is now in very truth, "*becoming* the channel of conveyance of the extensive and valuable trade of a rising empire," but was also the first to predict the commercial success of that route through the Mohawk valley which was afterwards taken by the Erie Canal and the New York Central Rail Road. He not only predicted the accomplishment of this line of communication with the West, but he actually explored it in person. Before he had repaired to Annapolis to resign his commission, and even before the terms of peace with Great Britain had been definitely arranged, Washington was again turning his attention to the scheme of opening up the West to trade and commerce. He left his camp at Newburg on the Hudson, and made, on horseback, an exploring expedition of nearly three weeks' duration through the State of New York. In a letter to the Marquis of Chastelleux, he gives an account of his trip: "I have lately made," he says, "a tour through the lakes George and Champlain, as far as Crown Point: then returning to Schenectady, I proceeded up the Mohawk river to Fort Schuyler; crossed over Wood creek which empties into the Oneida lake, and affords the water communication with Ontario. I then traversed the country to the head of the Eastern branch of the Susquehannah, and viewed the lake Otswego, and the portage between that lake and the Mohawk river, at Conajoharie. Prompted by these actual observations, I could not help taking a more contemplative and extensive view of the vast inland navigation of these United States, and could not but be struck with the immense diffusion and importance of it; and with the goodness of that Providence which has dealt his favors to us with so

profuse a hand. Would to God we may have wisdom enough to improve them! I shall not rest contented until I have explored the Western country, and traversed those lines (or a great part of them) which have given bounds to a new empire."[1]

After resigning his commission at Annapolis, Washington returned to Mount Vernon where he arrived the day before Christmas, 1783. "The scene is at last closed," he writes, four days afterwards, to Governor Clinton, of New York, who had accompanied Washington in his recent explorations, "I feel myself eased of a load of public care. I hope to spend the remainder of my days in cultivating the affections of good men, and in the practice of the domestic virtues."[2] But how impossible it was for Washington to continue a mere private citizen, on the banks of the Potomac, solacing himself with the tranquil enjoyments of home life, as he had promised himself and his friends, is evinced by a letter to Thomas Jefferson, the following spring, in which he returns with fresh zeal to the project of national improvement. "How far, upon mature consideration," he says, "I may depart from the resolution I had formed, of living perfectly at my ease, exempt from every kind of responsibility, it is more than I can at present absolutely determine. . . . . The trouble, if my situation at the time would permit me, to engage in a work of this sort [the Potomac scheme] would be set at nought; and the immense advantages, which this country would derive from the measure, would be no small stimulus to the undertaking, if that undertaking could be made to comport with those ideas, and that line of conduct, with which I meant to glide gently down the current of life, and it did not interfere with any other plan I might have in contemplation."[3] The connection of this revival of public

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[1] Stewart's Report, p. 2. Marshall's Life of Washington, V., p. 9.
[2] Writings of Washington, IX., p. 1.
[3] Writings of Washington, IX., p. 32.

spirit with those recent explorations, with Governor Clinton,[1] in the Mohawk valley is shown by this allusion: "I know the Yorkers will delay no time to remove every obstacle in the way of the *other* communication, so soon as the posts of Oswego and Niagara are surrendered." Washington requests, moreover, that Jefferson should confer with Thomas Johnson, formerly governor of Maryland, on this subject, as he had been a warm promoter of the Potomac scheme before the Revolution broke out.

In the light of these suggestions, we are not surprised to find Washington soon actively engaged in furthering the enterprise for which, ten years before, he had enlisted the legislative sympathies of Virginia and had secured the coöperation of Mr. Johnson of Maryland. Washington started on another tour to the west on the first of September, 1784, and was absent from home a little more than a month. His tour westward was less extensive than he had contemplated,[2] for the Indians were still dangerous, but he managed to travel six hundred and eighty miles on horseback, and took careful notes in his journal of all conversations with the settlers and other persons who were acquainted with the facilities for communication between east and west. There is an interesting fac-simile, in Stewart's Report, of a map of the country between the waters of the Potomac and those of the Youghiogheny and Monongahela Rivers, as sketched by Wash-

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[1] It is highly characteristic of these two public spirits that they took occasion to secure together 6,000 acres of land on the Mohawk river (Montgomery County). See Washington's will, Sparks, I., p. 584, note (o). From a letter to Clinton of November 25, 1784, it would appear that the two friends had talked of buying up Saratoga Springs. Writings of Washington, IX., p. 70.

[2] Washington had intended to make a trip down the Ohio as far as the Great Kanawha, for the purpose of inspecting his lands in that region. We must not lose sight of Washington's business nature. "I am not going to explore the country, nor am I in search of fresh lands, but to secure what I have," writes he to Dr. Craik, July 10, 1784. But in this statement, Washington was not quite just towards his own motives, as events show.

ington in 1784. A new route of portage, which he designates from Cumberland to the Youghiogheny, does not deviate materially from the line afterward taken by the Great National Road. Washington employed men at his own expense to explore the different ways of communication, and, from their detailed reports[1] and his own experience, he arrived at the conclusion that there were two practicable routes[2] to the Ohio valley, the one over the mountains from Cumberland, *via* Wills Creek and Pennsylvania, which is now the Connellsville branch of the Baltimore and Ohio, or the so-called Pittsburgh, Washington, and Baltimore railroad, and the other through the mountains from Cumberland, along the upper Potomac, which is now the grand route to Wheeling and Parkersburg, from which points the Baltimore and Ohio stretches it Briarean arms to the Lakes and to the Father of Waters.

But we seek the beginning of all this. The first results of Washington's tour of exploration appear in a letter to Benjamin Harrison, Governor of Virginia, dated the tenth of October, 1784, which we must regard as a fresh *Ausgangspunkt* and the real historic beginning of the Potomac enterprise. With prophetic instinct, Washington seemed to realize the greatness of his scheme. "I shall take the liberty now, my dear Sir, to suggest a matter, which would (if I am not too short-sighted a politician) mark your administration as an important era in the annals of this country if it should be recommended by you and adopted by the Assembly."[3] Washington then proceeds to support by facts what had long been his "decided opinion," that the shortest and least

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[1] Two of these reports are reprinted by Stewart and are not to be found in Sparks' collection of Letters to Washington.

[2] See report of the Maryland and Virginia commissioners in regard to extending the navigation of the Potomac and constructing two roads to the west, one through Pennsylvania, the other "wholly through Virginia and Maryland," to Cheat river. Pickell, p. 45. Compare Washington's letter to Madison, December 28, 1784. Stewart's Report, p. 35.

[3] Writings of Washington, IX., p. 58.

expensive route to the West was by way of the Potomac. He takes Detroit as the supposed point of departure of trade from the northwest territory, and shows that the Potomac connection is nearer tide-water than the St. Lawrence, by one hundred and sixty-eight miles, and nearer the West than the Hudson at Albany, by one hundred and seventy-six miles. Washington's calculation of distances, by way of Fort Pitt, a list which was appended to the above letter, is not reprinted in Sparks, but was copied by Stewart from the original manuscript, loaned him by General Mason of Virginia.[1]

"Distances from Detroit to the several Atlantic sea ports.

From Detroit, by the route through Fort Pitt and Fort Cumberland:—

	Miles.
To Alexandria, (or Washington City,) . .	607
" Richmond, ...	840
" Philadelphia, ...	745
" Albany, ...	943
" New York, ...	1103"[2]

Washington points out to Governor Harrison the prospect of Pennsylvania's opening up communication with Pittsburgh by way of the Susquehanna and Toby's Creek and then cutting a canal between the former and the Schuylkill river. He says "a people who are possessed of the spirit of commerce, who see and who will pursue their advantages, may achieve almost anything." That New York also would join in "*smoothing the roads and paving the ways for the trade of the western world,*" Washington clearly foresaw. On this point he says, "no person, who knows the temper, genius,

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[1] See Stewart's Report, p. 2, or Pickell's History of the Potomac Company, p. 174.

[2] Pittsburgh, the head of steamboat navigation on the Ohio, is now actually distant from New York by French Creek, Lake Erie, and the Erie Canal, 784 miles. From Pittsburgh to Washington, by the Chesapeake and Ohio Canal, it is 346 miles.

and policy of those people as well as I do, can harbor the smallest doubt."[1] Washington's language seems almost prophetic.

The political importance of establishing commercial connections with the west seems to have impressed Washington most profoundly. He reminds Harrison how "the flanks and rear of the United States are possessed by other powers, and formidable ones too" [Spain and England]. He dwells upon the necessity of cementing all parts of the Union together by common interests. The Western States stand now, he says "upon a pivot." A touch would turn them. The stream of commerce would glide gently down the Mississippi unless shorter and easier channels were made for it to Atlantic seaports. Washington urges that commissioners be appointed to make a careful survey of the Potomac and James rivers to their respective sources and that a complete map of the whole country intervening between the seaboard, the Ohio waters, and the Great Lakes, be presented to the public. "These things being done," he says, "I shall be mistaken if prejudice does not yield to facts, jealousy to candor, and, finally, if reason and nature, thus aided, do not dictate what is right and proper to be done."

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[1] While advocating the Potomac route to a citizen of Maryland, Washington declares with patriotic fervor: I am not for discouraging the exertions of any state to draw the commerce of the western country to its seaports. The more communications we open to it, the closer we bind that rising world (for indeed it may be so-called) to our interests, and the greater strength we shall acquire by it." (See Marshall's Life of Washington, V., p. 12.

To a member of Congress he expresses himself even more positively: "For my own part, I wish sincerely every door of that country [the West] may be set wide open, and the commercial intercourse with it rendered as free and easy as possible. This, in my opinion, is the *best*, if not the *only cement*, that can bind these People to us for any length of time; and we shall be deficient in foresight and wisdom if we neglect the means of effecting it."

Stewart's Report, p. 7. Neither of these passages are to be found in Sparks' collection of the Writings of Washington.

This letter to Governor Harrison was brought before the legislature of Virginia, and public spirit in favor of the Potomac scheme was soon awakened. It became necessary to secure the coöperation of Maryland and a perfect harmony of legislative action on the part of both states in chartering the proposed company. A deputation, consisting of General Washington, General Gates, and Colonel Blackburn, was accordingly sent by the Virginia legislature to Annapolis, in December, 1784, where they were received with distinguished honors. A delegation was straightway appointed by the legislature of Maryland to confer with the gentlemen from Virginia. Among the Maryland commissioners was Charles Carroll of Carrollton, the man who was destined to see the historic development of that "enlarged plan" which Washington had so early recommended to Thomas Johnson of Maryland, for, on the fourth of July, 1828, this Nestor of American patriots, who had outlived all other signers of the Declaration of Independence, laid the first foundation of the Baltimore and Ohio railroad.[1]

It is not our purpose to write another history of the Potomac Company. That work has been done by Pickell. Our object is to show the public spirit and pioneer influence of George Washington in opening a channel of trade between the East and West. His suggestions were adopted by the commissioners; his views were embodied in their report to the legislatures of Maryland and Virginia; and this report was the basis of all subsequent legislative action in regard to the proposed enterprise. Washington, moreover, introduced his plan to the notice of Congress, on account of its political

[1] Charles Carroll of Carrollton was over ninety years old at the time the Baltimore and Ohio was founded. His speech to a friend on that occasion was not unworthy the beginning of railroad enterprise in this country: "I consider this among the most important acts of my life, second only to my signing the Declaration of Independence, if even it be second to that." History and Description of the Baltimore and Ohio Railroad. By a Citizen of Baltimore. 1853, p. 20.

bearing in turning the channels of trade away from Spanish and British influence. "Extend the navigation of the eastern waters;" he writes to a member of Congress, "communicate them as near as possible with those which run westward—open to the Ohio; open also such as extend from the Ohio towards Lake Erie, and we shall not only draw the produce of the western settlers, but the peltry and fur-trade of the lakes to our ports; thus adding an immense increase to our exports, and *binding these people to us by a chain which can never be broken.*"[1] This was the first suggestion to Congress of that policy of internal improvements, which, from the beginning of the National Road, in 1806, was followed up with considerable zeal, until General Jackson vetoed the Maysville Road, in 1829. The policy of Exploration and National Surveys, which our government still adheres to, was likewise suggested by George Washington, and that, too, in connection with the Potomac scheme.[2]

The public spirit of George Washington is strikingly manifest, not only in these pioneer efforts for the good of our nation, but in a project which is so nearly connected with the Potomac enterprise that we must not pass it by, although the limits of this paper will not allow us a special treatment of the subject. Before the organization of the Potomac Company, of which George Washington became first president in 1785, continuing in office until 1788,[3] when he was elected president of the United States, the legislature of Virginia passed an act vesting George Washington with one hundred and fifty shares in the proposed companies for extending the

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[1] Marshall's Life of Washington, V., p. 14. It is a mistake to suppose that Washington did not appreciate the importance of the Mississippi to the United States, and the true interests of the country in obtaining a free navigation of that river. He saw that this would come in good time. See Letter to R. H. Lee, July 19, 1787.

[2] See letter to Richard Henry Lee, President of Congress, 1784. Writings of Washington, IX., p. 80.

[3] The second president of the Potomac Company was Thomas Johnson of Maryland, the man to whom Washington addressed his letter of July 20, 1770, suggesting "an enlarged plan" for the Potomac enterprise.

navigation of the Potomac and James rivers. This was done by the State of Virginia, through its representatives, who desired to testify "their sense of the unexampled merits of George Washington," and to make those great works for national improvement which were to be monuments to his glory at the same time "monuments also of the gratitude of his country."

Washington, although deeply sensible of the honor his countrymen had shown him, felt himself much embarrassed by this substantial token of their good will and affection, and consequently declined their offer, for he wished, he said, to have his future actions "free and independent as the air." In a letter to Benjamin Harrison, Governor of Virginia, Washington, after a graceful tribute to the generosity of his native State, thus declares his position: "Not content with the bare consciousness of my having, in all this navigation business, acted upon the clearest conviction of the political importance of the measure, I would wish that every individual who may hear that it was a favorite plan of mine, may know also that I had no other motive for promoting it, than the advantage of which I conceived it would be productive to the Union, and to this State in particular, by cementing the eastern and western territory together." . . .

"How would this matter be viewed, then, by the eye of the world, and what would be the opinion of it, when it comes to be related, that George Washington has received twenty thousand dollars and five thousand pounds sterling of the public money as an interest therein? Would not this, in the estimation of it, (if I am entitled to any merit for the part I have acted, and without it there is no foundation for the act), deprive me of the principal thing which is laudable in my conduct?"[1] In a subsequent letter to Patrick Henry, Har-

[1] Pickell, p. 135, or Writings of Washington, IX., p. 84. Washington's private opinion as to the effect the Potomac enterprise would have in raising the value of his western lands, may be gathered from a comparison of his writings, IX., pp. 31, 99.

rison's successor as governor of Virginia, Washington speaks of his original determination to accept no pay whatever for his public services: "When I was first called to the station with which I was honored during the late conflict for our liberties, to the diffidence which I had so many reasons to feel in accepting it, I thought it my duty to join a firm resolution to shut my hand against every pecuniary recompense. To this resolution I have invariably adhered, and from it, if I had the inclination, I do not feel at liberty now to depart."[1] But, in view of the earnest wishes of Patrick Henry and the legislature of Virginia, that Washington's name might be indentified with this great scheme for public improvements, Washington finally consented to appropriate the shares, not to his own emolument, but for objects of a public nature.

[1] Pickell, p. 143.

WASHINGTON'S PLAN

FOR A

NATIONAL UNIVERSITY.

The shares that Washington received from the Potomac Company seem to have constituted the material basis of his famous plan for a National University. An examination of his correspondence with Edmund Randolph and Thomas Jefferson, reveals the fact that Washington's original purpose was to appropriate the Potomac and James river stock for the establishment of two charity schools, one on each of the above rivers for the education and support of the children of those men who had fallen in the defense of American liberty.[1] Afterward, however, believing the stock likely to prove extremely valuable, Washington determined to employ the fifty shares, which he held in the Potomac Company, for the endowment of a National University, in the District of Columbia, "under the auspices of the general government." The one hundred shares which he held in the James River Company, were given to Liberty Hall Academy, in Virginia, now the Washington and Lee University. Although Washington declared his conviction that it would be far better to concentrate all the shares upon the establishment of a National University,[2] yet, from a desire to reconcile his gratitude to Virginia with a great public good, he concluded to divide

[1] Writings of Washington, IX., pp. 116, 134.
[2] Writings of Washington, XI., p. 24.

the bequest as above described. "I am disposed to believe," he writes to the governor and legislature of Virginia, "that a seminary of learning upon an enlarged plan, but yet not coming up to the full idea of a university, is an institution to be preferred for the position which is be chosen. The students, who wish to pursue the whole range of science, may pass with advantage from the seminary to the University, and the former, by a due relation, may be rendered coöperative with the latter."[1]

The project of a National University was a favorite scheme of Washington's old age. It was more than an "enlarged plan;" it was a "full idea." In these days of striving for a broader knowledge of economic laws, for a better civil service, and for a thorough understanding of the principles of legislation, is it not well to consider for a moment Washington's plan for "the education of our youth in the science of government?" Since it is purely a matter of fact that the most trusty and efficient servants, of whom this country can boast, are trained at a government institution, which was suggested by George Washington in a speech to Congress, as second only to a National University, it is not unlikely that there may be some essence of political wisdom even in the larger project. Washington said "the art of war is at once comprehensive and complicated; it demands much previous study." The American people found out, some years ago, that Washington was right on that point, and they are now beginning to suspect, that even the art of government requires some previous study, and that, possibly, "a flourishing state of the arts and sciences contributes to national prosperity and reputation."[2]

Washington's letters, after 1794, are full of allusions to his new scheme, and he never tires of expatiating upon the

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[1] Writings of Washington, XI., p. 24.

[2] Speech of Washington to Congress, December 7, 1796. Writings of Washington, XII., p. 71.

advantages which would arise from a school of politics where the future guardians of liberty might receive their training. But there is a passage in Washington's last will and testament, which sums up his views upon this important matter: "It has always been a source of serious regret with me," he says, "to see the youth of these United States sent to foreign countries for the purpose of education, often before their minds were formed, or they had imbibed any adequate ideas of the happiness of their own; contracting, too frequently, not only habits of dissipation and extravagance, but *principles unfriendly to republican government*, . . . which thereafter are rarely overcome; for these reasons it has been my ardent wish to see a plan devised, on a liberal scale, which would have a tendency to spread systematic ideas through all parts of this rising empire, thereby to do away with local attachments and State prejudices, as far as the nature of things would, or indeed ought to admit, from our national councils. Looking anxiously forward to the accomplishment of so desirable an object as this is, (in my estimation), my mind has not been able to contemplate any plan more likely to effect the measure, than the establishment of a university in the central part of the United States, to which the youths of fortune and talents from all parts thereof may be sent for the completion of their education in all branches of polite literature, in the arts and sciences, in acquiring knowledge in the principles of politics and good government."[1] . . .

It was reserved for later times to see firmly established, not far from the borders of the Potomac, midway between North and South, and under the very shadow of one of Washington's monuments, an institution, which, if not national in name, is national, nay cosmopolitan, in spirit, and is striving to realize "the full idea of a university."

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[1] Writings of Washington, I., p. 571. See also XI., p. 3.

ORIGIN

OF THE

BALTIMORE AND OHIO RAILROAD.

It remains now for us to point out the connecting links between the Past and Present, between the pioneer schemes of George Washington, for opening communication with the Great West, and the railroad enterprise of to-day, which also is the outgrowth of public spirit, and not without its influence upon the development of this country or the permanent welfare of a republic of letters. The work of clearing the Potomac river from obstructions was never fully carried out, and only one dividend was ever paid upon the stock invested.[1] But the Chesapeake and Ohio Canal Company resumed the enterprise and have achieved success. There is now perfect communication from tide-water to Cumberland, along the line of the Potomac, and Washington's scheme is thus far realized. According to a report made by the president of the Chesapeake and Ohio Canal Company, in 1851, this work is considered "as merely carrying out in a more perfect form the design of General Washington, and as naturally resulting from the

[1] Report of the Chesapeake and Ohio Canal, 1851, p. 20. Washington had such confidence in the Potomac Company that he recommended his legatees to take each a share of the Potomac stock in his estate rather than the equivalent in money. He thought the income from tolls would be very large when navigation was once opened. The James River stock became productive in the course of a few years after Washington's death. Writings of Washington. Note by Sparks, XI., p. 4.

views and measures originally suggested and advocated by him."[1]

But the true historic outcome of Washington's pioneer scheme must be sought for, not simply in the Chesapeake and Ohio Canal, which, starting at Cumberland, brings down coal from the mountains to the sea, but in that "enlarged plan" which regards Cumberland, as Washington surely did, merely as a stepping-stone to intercourse with the Ohio Valley, the Great Lakes, and the Far West. It is interesting to note, that, when the hope of ever constructing a canal over the Alleghany mountains was given up, in 1826, in consequence of the report of the French engineers, who had been employed to survey the proposed routes, the Baltimore and Ohio railroad enterprise was undertaken, at the suggestion of Philip E. Thomas, who resigned his office as commissioner for Maryland in the Chesapeake and Ohio Canal Company, and devoted himself henceforth to the task of winning back for Baltimore the line of western trade, which had been diverted from the Cumberland road by the Erie Canal, a work completed in 1825. In a report on this subject to the enterprising spirits of Baltimore, by Mr. Thomas, on the nineteenth of February, 1827, may be seen, not only the beginning of the first railroad enterprise in this country,[2] but also the revival of Washington's pioneer suggestions concerning the best route from the seaboard to the West. The following extract from this report has an historic significance, which has never been

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[1] Report on the Chesapeake and Ohio Canal, 1851, p. 20.

[2] Three miles of tramway, constructed in 1827, from the granite quarries to the wharves at Quincy, Massachusetts, can hardly be called a *railroad enterprise*, any more than can the quarry tramways of England, which existed long before the opening of the first railroad in the world, from Manchester to Liverpool, in 1830, the same year as the opening of the Baltimore and Ohio, from this city to Ellicott's Mills, distant fourteen miles. A locomotive engine was, however, first used on the Quincy road, in 1829. The same was imported from England, where engines were just coming into use upon quarry-tramways.

duly emphasized, or even placed in its proper connections: "Baltimore lies two hundred miles nearer to the navigable waters of the West than New York, and about one hundred miles nearer to them than Philadelphia: to which may be added the important fact, that the easiest, and by far the most practicable route through the ridge of mountains, which divides the Atlantic from the Western waters, *is along the depression formed by the Potomac in its passage through them.*"[1] Philip E. Thomas, a worthy successor of that enterprising spirit, Governor Johnson, of Maryland, who succeeded Washington as president of the Potomac Company, became the first president of the Baltimore and Ohio railroad. The legislature of Maryland voted the sum of $500,000, in 1828, for the encouragement of the work. This was the first legislative aid ever given in this country to railroad enterprise. An appropriation of $1,000,000 was afterwards recommended for it by committees in both houses of Congress, but the bill failed to pass, owing to the opposition of General Mercer,[2] president of the Chesapeake and Ohio Canal Company and chairman of the committee on roads and canals. But our Government detailed West Point graduates to aid in engineering this work, which has proved of truly national importance and a worthy outcome of the National Road. As this country is indebted to George Washington for the suggestion both of this work and of a military academy, where engineers are trained for the public service, it would seem as though, in one way or another, all lines of our public policy lead back to Washington, as all roads lead to Rome.

The connection of the Baltimore and Ohio with Washington's scheme for opening the West to trade and commerce, cannot be disputed upon the ground that the application of steam revolutionized locomotion and the routes of travel.

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[1] History and Description of the Baltimore and Ohio Railroad. By a Citizen of Baltimore. 1853, p. 12.

[2] History and Description of the Baltimore and Ohio Railroad, p. 22.

Steam had nothing whatever to do with the inception of the Baltimore and Ohio, for the first locomotive power employed on this road, the first division of which was opened in 1830, was horse-power. The Liverpool and Manchester road was opened the same year, and locomotive engines soon came into general use, but, on the Baltimore and Ohio, cars were first drawn, like canal boats, by horses and mules. The transitional character of this Baltimore enterprise is still further illustrated by the fact, that Evan Thomas rigged a railway-car with sails, which was called the "Æolus," and was pronounced a great success—on windy days. Baron Krudener, a Russian envoy to this country, about the time the experiment was made, was so delighted with the invention, that he said he should like to send over all his staff from Washington "to enjoy sailing on the railroad." The subsequent introduction of railways into Russia and the official patronage extended to Ross Winans, of Baltimore, for his mechanical inventions, are largely due to the glowing accounts of American enterprise given by Baron Krudener, after his return to St. Petersburg. But Ross Winans' invention of powerful locomotives and friction-wheels did not originate the Baltimore and Ohio. They were the result of premiums offered to the inventive genius of America by Philip E. Thomas and his colleagues. The opening of a railroad, or of some better means of communication with the West than portage over the Cumberland road, became a living necessity for the merchants of Baltimore after the Erie Canal had turned the current of western trade. It was positively a struggle for commercial existence. The construction of tramways, the use of horse-power and of sails, and the final application of steam, and Ross Winans' inventions, were but a process of natural selection, and only the fittest has survived. But the historic germ of this wonderful evolution is Washington's pioneer scheme for opening a channel of trade to the West by way of the Potomac. Of course external influence was necessary. The channels of enterprise must always be kept open, like the Suez Canal, by the constant effort of men.

The original idea of Washington, concerning the Potomac route, has become an "enlarged plan." *A road to the western waters* is the leading idea, from first to last, in the Reports of the Baltimore and Ohio railroad. This was the thought of Philip E. Thomas, and it is the thought to-day, for there are *still western waters*. The completion of "the great national route" to the Mississippi, was announced in 1857, and, in that year, occurred one of the greatest railway celebrations[1] this country has ever witnessed, for three grand routes, the Baltimore and Ohio to Parkersburg, the Marietta and Cincinnati from Parkersburg, and the Ohio and Mississippi from Cincinnati to St. Louis, were simultaneously ended and formed into "a chain which can never be broken," as Washington once said of commercial enterprise between the East and West. The route which he suggested is now indeed "becoming the channel of the extensive and valuable trade of a rising empire."

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[1] Book of Great Railway Celebrations in 1857. By William Prescott Smith. On pages 215–16 there is an interesting speech, delivered by Mr. George Bancroft, at the celebration in Cincinnati. His glowing tribute to Baltimore must not be forgotten: "This great work is emphatically the work of the City of Baltimore, and it may almost be said, of Baltimore alone, for it was carried on without much favor from its own State, and sometimes in conflict with the rivalry of its neighbors. Nor is this all the marvel. The work in its completeness has cost more than $31,000,000, and was entered upon with a brave heart and at a time when the real and personal property of Baltimore was less than $27,000,000. But Baltimore was always brave. In the gloomiest hour of the American Revolution, her voice of patriotism was loud and clear—her conduct an example to sister cities; and when has she been wanting to the cause of civil or religious freedom? . . . She is called the Monumental City. Her column rises as a memorial of the Father of his country; but this is her own monument. It spans the Alleghanies; it reaches from the waters of the Atlantic to the bosom of the Ohio. . . . . We celebrate the opening of the direct communication between Baltimore, Cincinnati, and St. Louis. The occasion is one of great national interest. The system of roads binds indissolubly together the East and the West. . . . . How would Washington have exulted, could he but have seen his great and cherished idea of an international highway carried out with a perfection and convenience which surpassed the power of his century to imagine!"

By the waters of the Potomac, near our Nation's Capital, there stands to-day a monument to George Washington, completed at last after a lapse of more than a century from the close of the American Revolution, which event it was Washington's idea to commemorate upon that very spot by a stately column visible from Mt. Vernon. But no monument, conspicuous from afar, can adequately symbolize the glory of the Revolutionary achievement, or measure the greatness of its greatest hero. The historic influence of Washington's deeds and grand ideas will flow on like the Potomac into a widening, boundless sea. And even that poor river of trade which Washington first sought to open from the West, has now become a mighty current of commercial enterprise, seeking a quick way seaward past another Monumental City, which, in art and science and the "enlarged ideas" of Washington, is as truly grateful to his memory as the city which bears his name and contains his latest monument.

II-III

LOCAL INSTITUTIONS

OF

VIRGINIA

"Virginia en dat quintam."—*Old Seal.*

"*Virginia:* which is the most antient and loyal, the most plentiful and flourishing, the most extensive and beneficial Colony belonging to the Crown of *Great Britain*, upon which it is most dependent. . . . . *Virginia* is esteemed one of the most valuable Gems in the Crown of *Great Britain*."—*Jones: Present State of Va., p.* 47.

"The manners of Virginia and Maryland exerted the greatest influence on manners and upon the development of personal, social, and political freedom in the South, and may be considered as patterns after which those of the other Southern colonies followed."—*E. G. Scott: The Development of Constitutional Liberty, p.* 125.

"The possession of land was, even whilst the idea of nationality was mainly a personal one, the badge, if not the basis, of all political and constitutional rights. On it depended, when the personal idea yielded to the territorial, the rights and obligations, the rank, value, and credibility of the member of the body politic."—*Stubbs: Constitutional History of England, I.* 74.

"If *New England* be called a Receptacle of Dissenters and an *Amsterdam* of Religion, *Pennsylvania*, the Nursery of Quakers, *Maryland*, the Retirement of *Roman* Catholics, *North Carolina*, the Refuge of Runaways, and *South Carolina*, the Delight of Buccaneers and Pirates, Virginia may be justly esteemed the happy Retreat of *true Britons* and *true Churchmen* for the most part."—*Jones: Present State of Va., p.* 48.

"There are other places at which, like some of the foregoing, the *laws* have said there shall be towns; but *nature* has said there shall not."—*Jefferson: Notes on Virginia, p.* 147.

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IN
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HERBERT B. ADAMS, Editor

History is past Politics and Politics present History — *Freeman*

THIRD SERIES

II-III

LOCAL INSTITUTIONS

OF

VIRGINIA

By EDWARD INGLE, A. B.

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I.

VIRGINIA AND VIRGINIANS.[1]

By reason of the comparative inaccessibility or scarcity of authoritative material the history of the Southern colonies has never been thoroughly understood. This is especially the case in regard to local institutions, the study of which has been either entirely neglected or carried on incidentally, so

[1] The history of the colony of Virginia and of the people of Virginia has been told by eminent writers. Its institutions, which lie at the bottom of its history, have been studied only casually, and this paper, therefore, has been written with the endeavor to fill up an existing gap, but the writer being a Marylander has been obliged to base his conclusions upon statements of Virginia authors, both before and since the revolution. The materials have been found in the libraries of the Peabody Institute, the Maryland Historical Society, and the Johns Hopkins University, and the information thence derived has been augmented through the courtesy and kindness of R. A. Brock, Esq., Secretary of the Virginia Historical Society, J. Barron Hope, Esq., editor of "The Landmark," Norfolk, Va., Hon. William Lamb, Mayor of Norfolk, and other Virginians. Most of the facts in the opening chapter have been brought out before in one way or another, but by a brief resumé and fresh arrangement it is hoped that they may be recalled, and may serve to explain certain features in the political life of Virginia and other Southern States. Great help in the study of Virginia sociology has been derived from the writings of H. A. Washington, Esq., and E. G. Scott, Esq. As this monograph treats of institutions, it has been thought best not to discuss, except incidentally, such subjects as the Governor, the Council, the customs system, relations with Indians, finances, &c., which properly belong to the field of institutions. There is no index, for matters relating to particular subjects have been grouped in particular chapters. Overlapping, however, has been necessary, though repetition has been avoided whenever it was possible to do so.

that a general impression prevails that there were no forms of local government in the South corresponding to those of New England, New York, Pennsylvania and elsewhere. It would have been very remarkable, if men coming from the same land should not have been influenced, in some degree at least, by the same instincts to establish similar institutions, and Mr. John Esten Cooke recognized that fact when he made his history of Virginia a history of Virginians, although the character of his work would not permit any extensive treatment of the subject of institutions. As the results of careful delving for over two years, the following pages are offered as an attempt to explain Virginia society at the commencement of hostilities against England and to show that the desire for local government and the growth of a spirit of liberty are not always dependent upon close settlement and the town meeting. These facts must be borne in mind; local self-government is conceded to be conducive to a liberty-loving spirit; the attempt to crush English liberties was resisted as strongly by Virginians as by New Englanders, and Massachusetts and Virginia, commanded by a Virginian, fought shoulder to shoulder, though, their institutions being different to all appearances, it might have been supposed that their respective politics would differ.

The underlying principle of history is that climate, natural environment, and habits of life exercise the greatest amount of influence in moulding men's minds, and, consequently, in determining what shall be the nature of the government evolved by any people. The first thing, therefore, to be studied is the topography of Virginia. The surface of the country, rising by several distinct stages from the Chesapeake Bay to the Appalachian system of mountains, was well wooded with pines, oaks, chestnuts, &c., and its forests were the homes of many kinds of animals of the chase and varieties of game birds. The so-called tidewater, or lowest section, was divided into many necks or peninsulas by wide branches of the bay and their tributaries. One of these rivers, the

James, seems to have burst forth from the great lake, which is supposed to have once covered the Shenandoah Valley, while that beautiful country, once rolling prairies, now dotted with farms and woods, was drained by the Shenandoah river, which found an outlet into the Cohongoruton, the present Potomac, by the huge rift in the mountains at the present Harper's Ferry. The river system of Virginia was a great, if not the most important, factor in determining the character of Virginia society, as it is proposed to show in the course of this monograph.

Proximity to the ocean, low lands terminating along the rivers in marshes, high plateaus, a diversity of mountain ranges and rolling country, all these features would indicate a land suited to the dispositions of many peoples. The same aspects of nature would be likely to insure variety of climates. The situation of Virginia was between the medium cold and the medium warm lands. It was subject, therefore, to sudden changes, either warm or cold, but of short duration, and along the bay shores the moisture of the air, while it tempered the heats of summer, made the winter's cold more penetrating. The soil of Virginia, from the marly deposits of the lowlands, to the rich loams of the Piedmont, the warm earth of the mountains, and the limestone land of the Valley, with its bottom lands formed in the bends of its many streams, rendered the country fit for many kinds of cultivation and for stock raising.

It would be interesting to consider briefly the geological features, but the surface of the country had much greater effect upon the people than did the neglected mineral riches, which in the last few years have begun to be realized. This was, with few exceptions, the land to which came in 1607 the mere handful of men prepared, as regards English enterprise, but not fully equipped with goods, to found a new nation.

The author of the "Norman Conquest," who delights in finding similarities between English and American institutions, has said, "If you wish to see Old England, you must go to

New England." With equal truth it may be said, "If you wish to see Old England, you must go to Old Virginia." Freeman evidently meant by his characteristic sentence that the institutions of New England conformed to those of the land of the English, before they had been softened down and centralized by the Norman conquest, which was so efficacious in making England what it is to-day. But in Virginia, before the American Revolution, one sees mirrored the England of the sixteenth, seventeeth, and eighteenth centuries. The Virginians, engaged in directing the affairs of the infant colony, in planting, or in warding off attacks by savage foes, turned their thoughts away from the semi-wilderness, and looked with deep affection towards their birth-land across the Atlantic, and, notwithstanding Puritan coercion during the Commonwealth, remained at heart staunch loyalists, until royalty had disgraced itself. Who were those colonists, those transplanted Englishmen, what their customs and feelings? First, the gay and dissolute "gentlemen" who went to Virginia with the expectation of becoming wealthy by little exertion, the loose characters who gave Smith and Dale so much trouble, and who preferred to squander their time playing bowls, or sitting idly in the market place. Smith set them to work chopping wood and adopted rigorous means for keeping the peace, for as Stith recounts—"the axes often blistering their tender fingers, they would, at every third stroke, drown the Echo with a loud Volley of Oaths; To remedy which Sin the President ordered every Man's Oath to be numbered and at Night, for every Oath, to have a can of water poured down his Sleeve, which so washed and drenched the Offender that in a Short time an Oath was not heard in a Week."[1] But such persons left comparatively little impress upon the colony. As prospects brightened, people arrived who possessed the means to carry on extensive planting, and who were determined to stay. The civil discord in England

[1] Stith: History of the Discovery of Virginia, p. 80.

was probably the cause of some with cavalier blood in their veins emigrating to the colony. Some few followers of Cromwell came into Virginia after the Restoration and many adherents of the "Pretender," when their hopes were baffled, found a congenial refuge in the fourth estate. Those Englishmen gave the stamp to the institutions, which were afterwards assimilated by the French Huguenots, who settled at Manican town, the Germans at Germanna, the thrifty and keen Scotch, the hardy Irish, and the plodding Pennsylvania Germans, who settled the Valley. The society resulting from the combination of such elements was divided into two classes of which the upper and ruling class was composed of planters, merchants, professional men, &c. Below them were the indented servants, some of whom were convicts, and some of whom had bound themselves for a term of years to defray the expenses of their transportation. The worst of these characters met with the punishment they had deserved, or escaped to England, or formed the nucleus of the shiftless class, known as poor whites. The facilities for taking up land and the provision made for servants, who had served their term, enabled the better disposed, whose sole crime had perhaps been poverty, to obtain a fair start and a chance of equalling in wealth, if not in position, their more fortunate neighbors. Circumstances, such as these, prevented the existence of a strong middle class between slaves and landholders, and produced a tendency for the two extreme classes to separate more and more from each other.

If the Dutch, who were the uncompromising enemies of the English, had wished to dwarf certain English characteristics, they could have devised no means of accomplishing their purpose more potent than the introduction of negro slavery among them. For the first twenty years after slaves were brought into Virginia they increased in number very slightly, but at last became of very considerable importance, and a disturbing feature of Virginia life. Bought and sold as chattels, bound to the soil, looking to their owners as

supreme, slaves were objects of pity; and labor, being almost entirely in their hands, was despised. In some cases great cruelty was inflicted upon these unfortunate beings, whose greatest ill was their lack of personal liberty. This was especially the case, if they were left to the entire control of overseers, or became restless, for Virginians were in constant dread of concerted attacks by their Helots. But it was to the owner's interest, to say the least, for his property to be well preserved and productive, and consequently for his slaves to be free from maltreatment or injury. One other character remains to be mentioned—the Indian, who disappeared leaving a trail of fire and blood, but making no impression upon the character of the colonists save in regard to their language which he enriched with soft-sounding words. The most pathetic spectacle in history, next to the sudden turning of the electric glare of the nineteenth century upon the benighted negro slave, is that of the Indian sullenly yielding step by by step to the onward crush of a stronger civilization.

Turning from the study of the various races that lived in the colony, let us consider the life and occupations of the dominant people. As is the custom now, so in colonial times Englishmen and other visitors to this country felt called upon on their return home to write a book about America. From the account of one of those chroniclers the following picture of a planter's life is drawn. Though written after the colony had become a State, it may be safely viewed as representing to the traveller's mind ante-Revolutionary manners: "The gentleman of fortune rises about nine o'clock; he perhaps may make an excursion to walk as far as his stables to see his horses, which is seldom more than fifty yards from his house, he returns to breakfast between nine and ten, which is generally tea or coffee, bread and butter, and very thin slices of venison, ham or hung beef. He then lies down on a pallet on the floor, in the coolest room in the house, in his shirt and trousers only, with a negro at his head and another at his feet to fan him and keep off the flies, between twelve and one he takes a draught of bombo or toddy, a liquor composed of

water, sugar, rum and nutmeg, which is made weak and kept cool; he dines between two and three and at every table, whatever else there may be, a ham and greens or cabbage is always a standing dish. At dinner he drinks cyder, toddy, punch, port, claret and madeira, which is generally excellent here; having drank some few glasses of wine after dinner, he returns to his pallet with his two blacks to fan him and continues to drink toddy or sangaree all the afternoon, he does not always drink tea. Between nine and ten in the evening he eats a light supper of milk and fruit, or wine, sugar and fruit, &c., and almost immediately returns to bed for the night."[1] This is no doubt a bold generalization and would probably lead one to believe that the planter's time was mostly occupied in eating, drinking and sleeping. But he had duties as well as pleasures. When not engaged in entertaining friends, which was a great feature in colonial life, he was attending Court, or the Assembly, looking after the interests of his plantation, or training his sons the best way he knew in gentlemanly conduct. The centre of Southern life was the home and it is there one must look to find an explanation of Virginia character. The wealthy planter was really the head of a little kingdom, being the dispenser of all benefits and the adjudicator of disputes between overseers and slaves, or among the slaves themselves, over whom he had practically unlimited control. While the father was engaged in the pursuits of affluence, the young blades were galloping over the country on fine blooded steeds, attending cock fights, playing the beau at Williamsburg, or tracking animals of the chase or the Indian through the forests.[2] Such out-door

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[1] Smyth: Travels, &c., Vol. I., p. 41.

[2] "They are such lovers of Riding that almost every ordinary Person keeps a Horse and I have known some spend the Morning in ranging several Miles in the woods to find and catch their Horses only to ride two or three Miles to Church, to the Court House, or to the Horse-Race, where they generally appoint to meet upon Business, and are more certain of finding those that they want to speak or deal with, than at their Home." Jones: Present State of Virginia, 1724, p. 47.

occupations were conducive to high spirits, self-possession in times of danger, and familiarity with weapons of defense, but were not very well calculated to produce a strong desire to settle down to a definite occupation for life. But one sees the young men following their fathers' footsteps in such offices as church wardens, vestrymen, justices, burgesses and the highly honored Councillors. The Virginia youth had comparatively few advantages for acquiring a thorough book learning, owing to the absence of any common-school system, but the question of education was not entirely neglected. To be sure, in 1671, Sir William Berkeley, the staunch old royalist Governor of Virginia wrote: "But I thank God, *there* are no *free schools* nor *printing*, and I hope we shall not have these hundred years; for *learning* has brought disobedience and heresy and sects into the world and printing has divulged them and libels against the best government. God keep us from both!"[1] But these sentiments can hardly be taken as indicating that Virginians had taken such a backward step toward the dark ages, for, as early as 1621, efforts had been made to establish a free school in the colony. Rev. Patrick Copeland, while cruising in East India waters, became so interested in the welfare of that colony that he exerted himself in its behalf and persuaded the sailors and others on board the "Royal James" to contribute £70. This sum was further increased by the gift of £30 from an anonymous source and otherwise to about £150. The matter having been referred to the Virginia Company, the members at a meeting held in October, 1621, decided to use the funds in building in Virginia a free school—"a publique free schoole for the educacon of Children and groundinge of them in principles of religion." The use of the word free in this connection does not imply that the school was to be conducted as a charity, for it was expressly understood that the scholars were to pay.[2] This "collegiate or free school" was to be pre-

[1] Hening's Statutes at Large, Vol. II., p. 517.
[2] Neill: The Virginia Company, p. 254.

paratory for the proposed college in Virginia, which was constantly in the minds of Virginia's founders, but which was not organized upon any permanent basis for nearly a century. The question of education, however, was lost sight of for a time after the Indian massacre, and the project of the free school was abandoned.

In 1634, Benjamin Sym left certain lands and cattle for the use of a free school, which a writer some years later mentioned as being in existence. After William and Mary College had obtained a good foundation it exercised a great influence upon the colony. For some years the college struggled for life, and the history of its first years is very interesting. Connected with it was a school for Indians which had been endowed by Mr. Robert Boyle. Another school for Indians was conducted successfully for several years by Mr. Charles Griffin, at Christanna, a fort built by Governor Spotswood among the Saponies. These with a few charity schools in parishes constituted the school system, but that this system produced such men as James Monroe, Carter Page, Peyton Randolph, Edmund Randolph, George Wythe, Edmund Pendleton, and Thomas Jefferson, demonstrates that it was anything but useless and ineffective. Some youths, who could afford it, were taught by private tutors, perhaps the holders of neighboring benefices; from the tutor's hand they went to William and Mary, or to England, perhaps to both, and after having enjoyed the benefits of foreign travel, returned to startle for a time their friends by mannerisms, and then to undertake the duties of men of good family. The daughters of the planters were initiated into the mysteries of housekeeping by their mothers, who saw that they acquired the necessary amount of social training to fit them to become wives of neighboring landholders.[1] Such is a brief account

[1] The following extract from Bradford's History of New England, Vol. II., p. 265, is interesting, as it shows that at an early day the education of women was viewed in the same light both in New England and in Virginia.

of plantation life—the life of the greater part of Virginia, notwithstanding paper towns.

The words of Mill may be applied with the greatest propriety to the results of such a life in Virginia—"though governments or nations have the power of deciding what institutions shall exist, they cannot arbitrarily determine how those institutions shall work."[1] The colonial Governors tried to impress upon the people their dependence upon the king—the county system with its concentrated government might have been expected to aid such efforts. But the very state of society, that suppressed small communities, tended to support the growth of independent feelings. Large proprietors with hereditary acres may have been at times haughty and overbearing towards inferiors in birth or fortune, yet at the same time and for similar reasons there was fostered in them a spirit of independence and of readiness to repel intrusion or to resent an injury to themselves or their families. What cared a man, having hundreds of dependents at his beck and call, for the mandates of a government thousands of miles away, so long as he was left in undisturbed possession of his property and could look around upon wide stretching fields, woods, stock and slaves, and say, "All these are mine"? But

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"Mr. Hopkins, the Governor of Hartford, upon Connecticut, came to Boston and brought his wife with him (a godly young women and of special parts) who was fallen into a sad infirmity, the loss of her understanding and reason, which had been growing upon her divers years by reason of her giving herself wholly to reading and writing, and had written many books. Her husband being very loving and tender of her was loath to grieve her; but he saw his error when it was too late. For if she had attended her household affairs and such things as belong to women, and not gone out of her way and calling to meddle in such things as are proper for men, whose minds are stronger, etc., she had kept her wits and might have improved them usefully and honorably in the place God had set her. He brought her to Boston and left her with her brother one Mr. Yale, a merchant, to try what means might be had for her. But no help could be had."

[1] Mill: Principles of Political Economy, Vol. I., p. 41.

in the management of his home affairs he was always deeply interested, and was prepared after due consideration and exhaustive discussion, which was relieved by frequent feasting, to lend his voice in the election of burgesses from his county and parish, and in after years to listen to the representative's report of doings at Richmond. The gatherings together of freemen upon "court-day," once a necessity, when roads were few and poor, and still the custom, in close vestry, or at convivial assemblies, for which Virginia has always been famous, were eagerly seized upon as occasions for an interchange of opinions about local politics and questions concerning the welfare of the community. There is no other explanation of the extreme concern which modern Virginians take in the result of their elections. The merits and demerits of candidates for political honors are argued for months before the elections and with such vehemence in many cases that the disputants make a personal matter of the debate.

But because an aristocracy ruled, it must not be imagined that the spirit of liberty was crushed. All of the various officers, from Governor to church warden, were jealously careful of their particular rights and vigorously maintained them. The members of the House of Burgesses more than once asserted that power came from them as representing the people, and, hampered though they were by the Governor and Council, were on the alert for any chance of strengthening their claims. The justices of the peace, who were usually selected from the most influential and upright men of the colony, were grievously insulted when an unworthy person was commissioned to sit on the same bench with them. A great part of the history of the Established Church in Virginia is a recital of disputes between ministers and vestries, or between the vestries and the Governor, all parties claiming conflicting powers. But members of the Council, justices, burgesses, all could forget such differences and unite in any popular movement. Bacon's rebellion, an American Revolution in miniature, was an expression of plans that the people

were prepared to carry out. With most remarkable foresight, Attorney General Bradley, arguing in 1729 against the assemblies of the colonies, wrote the following remarkable prophecy of the Revolution of 1776: "The Rebellion formerly by one Bacon and his party in Virginia, proved very expensive and troublesome to the Crown even at that time when none of these countryes were near so populous as they now are; and though it may be thought impracticable at present for any of these provinces or places alone to attempt anything of that kind, yet, if several of them should even at this time joyn in such a conspiracy, (and could these Assemblies openly do more tho' they had actually so engaged,) it would be extremely difficult and expensive, if not impracticable at this distance and in such a thicket of wood and trees as these countryes are to reduce them to their duty and obedience."[1] While Bacon was in power there was very liberal legislation for a government more directly by the people, but the sweeping repeals of the following years had a contrary effect, and although now and then some law was revived, the practical results of the rebellion were counterbalanced by greater movements towards centralization.

On the western side of the Blue Ridge mountains a different kind of society existed. Slavery was not as general as in the older sections of the colony, and except in cases where land was owned by eastern Virginians, large plantations devoted almost exclusively to the culture of tobacco were fewer, and a greater variety of crops was raised by farmers, who worked in the fields themselves. Cattle raising was also found to be profitable by reason of the fine prairie pasturage. As has been said before, a large number of the settlers were Pennsylvania Germans or natives of Germany. They brought with them the habits and customs of their native land and impressed them upon other colonists. For some years there was little trouble from the original owners of the soil, but as the

[1] New York Historical Collections, Vol.. V, p. 902.

whites increased in numbers, the Indians became aroused, and committed many horrible outrages. From a combination of circumstances resulting from border life, another element was introduced in Virginia society which preserved the idea of local self-government, namely, the pioneers. These were in some cases poorer people who, failing to secure recognition in the aristocratic low lands, had sought homes in the mountain fastnesses and the wilderness, where all men were equal. Even under ordinary circumstances liberty thrives best in an elevated country divided into small portions by natural barriers, precipices, torrents, or forests. What is the result when this country is peopled by men virtually independent of each other and the world? The hardy backwoodsmen were the incarnation of freedom. For a considerable time they were left to their own devices, and true to their instincts they adopted a rude form of justice which was sufficient to meet the demands of a pioneer community. Even when the colonial government sent justices and other officers among them, there was little need of such an arrangement and little heed paid to the authorities. But the most adventurous and restless pushed still further into the wilderness, where the necessity of providing for themselves and of guarding against attacks of wild beasts and of savage men, and their isolation from their fellows led to self-help and individual power in every man. So in the aristocracy of the older Virginia and in the equality existing in regions settled by her sons, developed in course of time the same characteristic individualism. But this individualism, while it was very good as such, prevented the unity of some interests that make up well organized society. One product of it, however, was great men and the growth of hero worship. The Virginia statesmen of the first half of this century had few superiors in the legislative halls of the nation, and they possessed strong hold upon the people.

Washington, the Lees, Henry, and many others, educated for the most part in exclusive ideas, were at the front in the

field and in the forum, when the colonies resolved to resist with arms the invasion of English liberties by a force, that was deaf to expostulations, imagining that in it was concentrated supreme power. Virginia statesmen and commons united in the revolutionary effort and played no second part in a fierce war that was in effect terminated by a victory won upon Virginia's soil. Frontiersmen aided the general cause. On May 25, 1775, the representatives of the people of Kentucky, transmontane Virginia, announced as the foundation stone of their government, "That we have a right, as a political body, without giving umbrage to Great Britain or any of the colonies, to frame rules for the government of our little society, cannot be doubted by any sensible or unbiassed mind." They arranged then for the establishment of courts of justice, popular representation, religious freedom and in everything endeavored to "copy after the happy pattern of the English laws."[1] This is but a single example of an expression of the feeling, which was rife and which had been produced by pioneer life.

An endeavor has been made to show that even in the strongly centralized government of Virginia, there was a power at work, which prevented the people from lapsing into such dependence as to acquiesce, at the bidding of George the Third's representative, in the extreme measures of that unfortunate monarch. While there may not have been any strong inclination to establish small local forms of government, the rule of Virginians by Virginians was most acceptable.

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[1] Bancroft: The American Revolution, Vol. II., pp. 368, 369.

II.

THE LAND TENURE OF VIRGINIA.

Closely connected and firmly interwoven with the social and political institutions of any State is its land system. No people can properly find place in the ranks of state-life until it has settled within some definite area, has a fixed abode, and has acquired land, which is held as the property either of the people as a whole or of individuals. Before a land system, however simple, has arisen, a people, no matter how strong and numerous it may be, constitutes nothing but a nomadic horde, grazing its cattle on the world's common pastures, planting at random in the common fields of the human race, and deserting one region after another, as soon as provisions for man and fodder for beast have been consumed. It may be safely said that the land system is one of the most important elements, if not the fundamental principle, of the institutional life of a nation, and its influence may be traced particularly in the history of the English race. The local institutions of Virginia cannot, therefore, be properly studied without some investigation into its land system. The subject ought to be always interesting to Americans, inasmuch as Virginia was the first English colony in this country and one whose territory was diminished by the planting of other colonies and later by the formation of other States. It ought to be considered especially at this time when a certain school of economic writers is laying so much stress upon what it believes to be imperfections in the manner of holding land not only in America but in the civilized world.

At the time of the settlement of America it was a recognized principle of the law of nations that the discovery of an uncivilized country by the subjects of any European power gave to that power a title to the country, the only difficulty being the question as to what constituted discovery, or what nation was the discoverer.[1] This principle was the foundation of the right of the Crown of England to the country where Virginia was founded. The voyage of Cabot in 1498 was claimed as discovery, and to make the right doubly sure, letters patent were granted in 1578 to Sir Humphrey Gilbert, and upon his failure, to his kinsman Sir Walter Raleigh, in 1584. But the efforts of Raleigh resulted in nothing further than the bestowing of the name Virginia upon the new land, and plans of colonization were kept in the background for nearly twenty years, until the successful voyage of Gosnold in 1602 revived the hopes of making permanent and paying settlements in America. Accordingly in 1606 letters patent were granted by King James to certain persons, afterwards known as the Virginia Company, for planting settlements in America. The company was practically divided into two colonies: the first, represented by Sir Thomas Gates, Sir George Somers, Richard Hackluyt, Edward Maria Wingfield, and others who should be joined with them, will alone be mentioned in this paper, as the second after prolonged inactivity revived under the name of the Council of Plymouth for New England.

The first colony was to plant anywhere within the 34th and 41st degrees north latitude, but its territory, when it had made a settlement, was to be but one hundred miles square, with the islands within one hundred miles of the sea coast. By the second letters patent, granted in 1609, the adventurers were incorporated, and the limits of the colony, whose members in America had dragged out a feeble existence for over two years, were extended three hundred more miles along the

[1] Kent: Commentaries, III., sec. 379.

sea coast and inland from sea to sea. Within that vast region are now included the whole or parts of Pennsylvania, Delaware, New Jersey, Maryland, Virginia, West Virginia, North Carolina, South Carolina, Georgia, Tennessee, Kentucky, Ohio, Illinois, Indiana, Missouri, Alabama, Mississippi, Arkansas, Indian Territory, Texas, Kansas, Colorado, New Mexico, Arizona, Utah, Nevada, and California, but the king and people of England had no conception of the extent of this grant, for they imagined that a westward journey of a few hundred miles would bring the explorer to the South Sea, that *ignis fatuus* of the sixteenth and seventeenth centuries. Those limits were reduced by three grants, that of Maryland to Cecil, Lord Baltimore, in 1632, that of Carolina to Clarendon and partners in 1665, that of Pennsylvania to Penn in 1681, and by the subsequent agreements between the colonies in regard to the grants. By the Peace of Paris in 1763 Virginia was deprived of all territory west of the Mississippi river, and by the Act of the Assembly of 1781 the State ceded to the government of the United States all its lands northwest of the Ohio river. Still further were the limits reduced by the loss of Kentucky in 1792 and by the creation of the State of West Virginia in 1863.

By the letters patent the Virginia Company held its lands in free and common socage, and when the charter was taken away in 1624, the same principle prevailed, although the right was obtained directly from the Crown. When the first settlers came to Virginia it was inhabited by another race, and therefore the first thing to be considered is the way in which the rights of the original proprietors were regarded.

Indian Lands.

The idea prevalent at the time was that it was entirely just for a civilized nation to occupy the lands of a barbarous people, for "the cultivation of the soil was an obligation imposed by nature upon mankind, and that the human race could not

well subsist, or greatly multiply, if rude tribes, which had not advanced from the hunter state, were entitled to claim and retain all the boundless regions through which they might wander. If such a people will usurp more territory than they can subdue and cultivate, they have no right to complain, if a nation of cultivators puts in a claim for a part, and confines the natives in narrower limits."[1] But it was reasonable to suppose that the natives would not have similar opinions, therefore, the Virginia colonists were instructed, though not explicitly, not to allow the Indians to perceive at once that white men were to possess the land. The Company, as it stated, in 1622 claimed that "they held not their land from king Powhatan, but from king James," and it would appear that it tried to force the natives to the same acknowledgement. Old Powhatan, however, was not to be deceived when Captain Newport presented him the royal presents, and force had to be used to place the crown upon his head. But the Indian chief insisted that the land was his, and as if in sarcasm gravely conferred upon the captain, in return, his old moccasins and cast off mantle.[2] The Chicahominies, however, accepted the red coats and the images in copper of King James and consented to be his "noblemen," not understanding that thereby they became his dependents. The views which the Indians took may be illustrated by the remark of Blunt, an Indian chief, to Governor Spotswood, "that the country belonged to them before our *English* came thither, so that he thought they had a better title than we, and ought not to be confined to such narrow limits for hunting."[3]

The Company made grants in great profusion, and, the King following its example, there was little regard paid to Indian rights until they, aroused by increasing encroachments,

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[1] Kent: Commentaries, III., sec. 387.

[2] Neill: Virginia Company, p. 11; Stith: History of the Discovery of Virginia, p. 223.

[3] Jones: Present State of Virginia, p. 18.

had sought revenge in massacres. In 1644, three hundred of the colonists were massacred, and after two years had been spent in driving the Indians from their homes into the forest, it was deemed best to make a treaty with them. By the articles of peace the Indians relinquished their claim to the rich territory between the York and James rivers, but were allowed to dwell on the north side of York river. Any Indian found within the vacated region, unless he had the badge of a messenger or trader, would be punished with death, and any Englishman trespassing upon the Indians' territory would be regarded as a felon, being lawfully convicted, but by a pass from the Governor he could cut timber or sedge there. The chief of the Indians agreed to hold the land as from the King of England, and that his successors should be appointed or acknowledged by the Governor of Virginia.[1] This seems to have been the first attempt at reaching any agreement satisfactory to both races about land holding, and it will be observed that the benefit was principally on the side of the English. Later it was ordered that persons who had settled in Indian lands should be removed by the county courts, which also were empowered to take the acknowledgment of sales of land by the Indians, but as the Indians caused a great deal of trouble in seeking to obtain new dwelling-places after they had sold their old planting grounds, it was enacted in 1655 that lands granted to Indians by the government should be inalienable except by consent of the Assembly.

But the colonists continued to intrude, and the Indians in retaliation killed the white men's hogs and cattle. Moreover the Indians were influenced by threats to make sales of their lands, or the interpreters translated their desire to have their lands confirmed into a yielding of their title. Indians were, therefore, positively prohibited from selling any lands at all, and white squatters were to be removed by the sheriff and their houses destroyed. Whites living within three miles of

[1] Hening: Statutes, Vol. I., p. 323.

Indian settlements were even obliged to send hands to help the Indians to fence in their corn lands in order to protect them from the colonists' hogs and cattle.[1] An idea of the manner in which the government was endeavoring to protect the Indians' few remaining rights may be had from the following incident. In 1661 the Rappahannock Indians complained that a certain Colonel Moore Fantleroy had received a conveyance of land from them, and had failed to make satisfaction. He had improved the land, and, as the Indians were unable to pay for the improvements, it could not be given back to them, so the Colonel was commanded to pay to the Indians thirty matchcoats, each containing two yards of material, and the one for the king was to be decorated with copper lace. By his failure to carry out this order he forfeited, for the time being, in the following year all his land except that part of it which was cleared and a marsh; and again he was ordered to make the payment of the matchcoats.

By the middle of the eighteenth century the manner of holding land by the Indians had become systematized, and in the older portion of the colony the red men and the whites were living in comparative amity. The system was about as follows: the Assembly caused to be set apart certain tracts, which were large enough to enable the Indians to pursue their occupation of hunting, fishing, and corn planting. In 1658 it was enacted that no grant of land should be made until all tributary Indians had a quantity of land equal to fifty acres for every bowman. Land could not be ceded by any Indian tribe without the consent of a majority of the great men and by the approval of the Assembly, but lands deserted by the Indians lapsed to the government. The Constitution of the State of Virginia provided that, "no purchase of land shall be made of the *Indian* natives but on behalf of the public by authority of the General Assembly." When a tribe became too small to occupy all its land, trustees were appointed by the

[1] Hening: Statutes Vol. II., p. 139.

Assembly to sell the land, and the proceeds were either distributed among the members of the tribe, or expended in the purchase of other lands for their use. In one instance the church wardens of a parish, in which an Indian tribe was seated, were ordered to lease the Indians' unimproved land for the benefit of their infirm or sick. Indians, who had land granted by the Assembly, paid an annual tribute to the government. In 1708 Queen Anne and the great men of the Pamunkey Indians petitioned the Governor and Council to excuse them from paying their annual tribute, but the heads of the remnants of the tribe continued up to within a few years ago to visit each Governor and present him with game, &c. The Pamunkies still own several hundred acres of land in Prince William county, but their land is in charge of trustees whom their best men nominate from among the whites. The discussion of the subject of Indian land tenure can not be better closed than by the words of Palmer in referring to the Pamunkies: "Thus have lived in perfect security for nearly two hundred years among the descendants of their ancient enemies, a remnant of the original owners of the country wrested from them by the power of the whites. During all this time their little state has remained as free as Andorra among the Pyrenees, or San Marino by the sea. They represent the only organized community of aboriginal Americans now left on the Atlantic slope, and with their disappearance will probably have passed away forever the last of that mysterious race left east of the Mississippi.[1]

Special Grants.

Before entering upon the study of the land tenure of corporations and that of individuals in general, it has been thought best to give an account of certain grants made to favored individuals, which differed somewhat from the ordinary

[1] Palmer: Calendar of Virginia State Papers, Vol. I., p. li.

land grants. In the first Assembly there was a dispute about the rights of the delegates of Captain Martin's plantation to seats, and the subsequent discussion and investigation revealed the fact that there was in Virginia a modified form of the old English institution of manors. It must not be supposed that there were manors with courts leet and courts baron, as they afterwards existed in Maryland, but there was an institution akin to them. To Captain Martin, who was a member of the Virginia Company, had been illegally granted by a private court of the Company a tract of land in Virginia, which he was permitted by his patent to possess "in as ample manner as any lord of any manor in England." All settlers upon his land were independent of the Governor and Council of the colony and were exempt from service to the colony except in war. To Captain Martin was given the privilege of unlimited fishing, of establishing common markets, of working mines, and of enjoying a share of precious metals found on his posessions. Martin seems to have exercised his power, for there was a complaint made against him that he had allowed his territory to become "a Receptacle of vagabonds and bankrupts and other disorderly persons, (whereof there hath bin made publique complaint) . . . who hath presumed of his owne authority (no ways deriued from his Ma^tie^) to giue uniust sentence upon diuers of his Ma^ts^ subjects and seen the same put in cruell execucon."[1] This statement, however, may have been exaggerated by reason of the bitter feeling against him. His refusal to submit to the laws of the colony caused the delegates to lose their seats, for the Assembly very honestly confessed its ignorance of the prerogatives of all English manors. Martin's patent was revoked in 1622, and a new one offered him, which after some delay he accepted. In October, 1623, he voted in England for the surrender of the Virginia Charter, and, no doubt as a recognition of his services, the Privy Council in December of the same

[1] Neill: Virginia Company, pp. 291, 292, 313.

year recommended that "more than ordinary respect should be had of him," and that he and all under him should not be oppressed, but allowed to enjoy their lands and goods in peace.[1]

Somewhat similar grants were made in 1679 by the Assembly to Major Laurence and Captain William Bird. For the defence of the frontiers Captain Bird was to settle at the falls of the James river two hundred and fifty men, of whom fifty were to be always ready to arm, and Major Smith was to do the same thing at the head of the Rappahannock river. Upon the fulfilment of these and other similar conditions the commander in each place was to possess full powers to execute martial discipline, and with two other inhabitants of the settlement, who should receive from the Governor a commission for the purpose, were to be granted the rights of county courts, and with six other persons elected by the inhabitants could make by-laws. The inhabitants were to be free for fifteen years from any levy except what they might lay upon themselves. There is no definite record of such settlement having been made, though the reference to laying the foundation of Richmond in 1733 by Colonel William Byrd would seem to imply that the other Bird had received the grant.[2]

Probably the most extraordinary grants in the history of Virginia land tenure was that of King Charles II., in 1673, to his two favorites, Lords Culpeper and Arlington. He gave to the two lords, to be enjoyed by them for thirty-one years, the whole territory of Virginia—"the entire territory, tract and dominion, commonly called Virginia, with the territory of Accomack, with all its rights, appurtenances and jurisdiction." All lands which ordinarily would have been forfeited to the King were to escheat to them. To them, instead of to the King, were to be paid the quitrents and any other royal dues, and even those rents which had been in arrears as far back as

[1] Sainsbury: Calendar of State Papers, Colonial, 1574–1660, p. 55.
[2] Byrd: History of the Dividing Line, II., p. 9.

1669. They were also privileged to make all land grants, to nominate sheriffs, surveyors, &c., to present ministers to parishes, to bestow land upon the vestries for parish purposes, and to make whatever division they wished of the country into counties, parishes, &c. There were many provisions in this grant contrary to the prevailing laws of Virginia, repugnant to the principles of free institutions, and unpleasantly affecting the rights of persons who had long held lands obtained in the usual manner. Accordingly, the Assembly in 1674 voted a large sum of money to support in England three agents, Colonel Francis Moryson, Mr. Thomas Ludwell and General Robert Smith, who were to influence the King to nullify the grant and to give the colony a new charter. They zealously attended to their trust, calling upon Lord Arlington, conferring with the agents of the two patentees, and endeavoring to make some adjustment acceptable to both parties. After considerable hesitation and delay, the agents proposed to the two lords that they should yield the patent and take in exchange one allowing them the quitrents, which, after all, were the main source of controversy, and the following reply was at last made by Arlington and Culpeper: " . . we think fit hereby to assure the gentlemen that after vacating our present patent and passing a new for the said quit-rents and escheats, which we here promise to do with all convenient speed, we shall redily agree to a collateral agreement with the said colony for the payment of the quit-rents and escheats, in the same manner by them proposed."[1] Afterwards Arlington proposed that the agents should buy their right, and the matter seems to have been dropped for a short period. Arlington then conveyed his right to Lord Culpeper, who in turn relinquished his patent in favor of the King, and thus, after some years of dispute, the colony in 1684 came again under the immediate control and protection of the Crown.

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[1] The documents in regard to this grant are printed at length in Burk's History of Virginia, Vol. II., Appendix, p. 340.

In the very first year of his reign, and while he was still an exile from his kingdom, Charles II. had granted to Lord Hopton, Earl of St. Albans, John, Lord Culpeper, and others the Northern Neck of Virginia, the territory lying between the Rappahannock and Potomac rivers, for which they were to pay, in lieu of service, annually to the King, £6, 13s, 4d. and to give a share of gold and silver found in the region. In 1671, most of the grantees having died, Charles regranted the region to the Earl of St. Albans, Lord Berkeley, Sir William Morton and John Tretheway, on the same conditions. The new proprietors could enjoy privileges similar to those afterwards conferred upon Arlington and Culpeper, and could divide the territory into manors in which they might hold a court baron, "and further to hold, within the said manors, a court leet, and a view of frank pledge, of all the tenants, residents and inhabitants of the hundred within such respective manors" twice a year.[1] But there was a proviso that the rights of those who already held grants from the government of Virginia should be unmolested, that the proprietors should not interfere in the military affairs in their territory, and that the Governor, Council and Assembly alone should have the right of laying a tax upon the inhabitants of the Northern Neck for the public good. After trying in vain to sell their rights to the agents for the colony of Virginia, the proprietors sold the territory and their rights to Thomas, Lord Culpeper, from whom they descended to Thomas, Lord Fairfax. That eccentric but shrewd proprietor managed his lands through an agent for some years, but he finally settled in Virginia and attended to his own estates. He soon persuaded himself that the Northern Neck ought to include a considerable region in the Shenandoah Valley and petitioned the King to enlarge his grant. This was done on condition that the rights of those who had already taken out patents from the King should not be disturbed. Fairfax, however, undertook to grant

[1] Hening: Statutes, Vol. IV., p. 517.

away certain lands which were held by royal grant, and the consequence was a lawsuit which continued for half a century. The proprietor divided part of his domain into manors, such as the Manor of Leeds, South Branch Manor, Patterson Creek Manor, Greenway Court Manor and Goony Run Manor. Some persons had already settled in one or two of these manors, and to those who remained he granted ninety-nine years' leases, which paid a rent of twenty shillings annually for every hundred acres. To new settlers land was rented at two shillings per hundred acres annually. Upon receiving a grant each person was obliged to pay ten shillings as a composition to the proprietor. The practice of paying composition and quit-rents in the Northern Neck was continued until 1785, when the Assembly abolished it.

Akin to the Fairfax grant was the grant of Beverley Manor, consisting of 118,491 acres to William Beverley and others, in 1736, the land was to be held upon the payment annually of about £118 to the King, and on condition that within three years the grantees should have improved three acres in every fifty of the whole tract. The last provision was no doubt intended to prevent the cession of large tracts, and to encourage closer settlement. Such grants, however, were most distasteful to the inhabitants of Virginia, for they prevented the country from being settled in a way that would have made it more regularly cultivated, and created a class of land monopolists, who, deriving their possessions from royal favor, were subservient to royal interests, were practically able to rule their tenants, and consequently to block the progress of independence, if they dared to do so.

Parish and Town Lands.

Opposed to the immense proprietary possessions, whose chief benefit was in increasing the wealth of individual favorites, were the lands of parishes and of towns, which were held for the public weal. Among the first lands laid out by the

company were set apart places for a church and glebe, and afterwards it was ordered that glebes for the use of the incumbent should be secured in every parish. Glebes were either bequeathed by piously disposed individuals, bestowed by the Assembly, or bought by the vestries with the proceeds of parish levies. The vestries had a general oversight of the parish lands, which were generally under cultivation, and upon which were built the incumbent's dwelling. The question as to whether any but an inducted clergyman had a right, while rector, to the glebe was mooted from time to time, but was never definitely settled, as there was also a dispute about the meaning of induction and about the persons or person in whom the right to induct was vested. In regard to this matter the Rev. George Robinson wrote to the Governor in 1695 as follows:

"The last time I had the honour to wait upon y^{or} Excell., I Enform'd you that there was a little controversy between our Vestry & me about our Church Glebe, to which I claim a peculiar right, they, on the contrary, pretending that only an inducted minister has just title thereto. But methinks 'tis a little hard clergyman conversant about so sacred a function should not onely be year by year hired by their parishioners assuming to themselves the liberty of determining y^{e} quantity of their Salaries, but also for want of this induction be debarred from the possession of their glebes at first devoted to so pious a use as the maintenance of the Ministry. This (if connived at) is no great incouragement for divines of any note or spirit to live here. Therefore I humbly beg you^{r} Excell. that the business of the glebes, but especially mine in particular, may now be taken into consideration, in order to the rectifying thereof, ... And truely it is not any profite y^{t} may accrue to me by this Glebe, that I regard so much as the bad presedent this instance may be to oy^{r} parishes, ..."[1]

[1] Palmer: Calendar of Virginia State Papers, Vol. I., p. 49.

The subject of glebe lands is interesting in view of the final disposition of them. Towards the middle of the eighteenth century interest in the affairs of the parishes began to weaken, in consequence partly of the opposition to the Establishment. When in 1776 dissenters were by law relieved from paying tithes for the support of ministers of the Church of England, it was ordained "that there shall in all time coming be saved and reserved to the use of the church by law established the several tracts of glebe land already purchased, &c.," and in 1783, when the former members of the church of England were incorporated as the Protestant Episcopal church, the glebes were vested in the minister and vestry of each parish. An Act of 1799, however, declared that all property of the Church had, at the Revolution, become the property of the Commonwealth and that prior legislation, in regard to it, had been unconstitutional. Upon the principle recognized in this Act, the Assembly in 1802 passed a general law providing that all glebe lands, which were then vacant, or should become so, should be sold by the overseers of the poor. The beginnings of this movement can be traced back to the Act of May, 1780, whereby certain vestries had been dissolved and their powers vested in overseers of the poor, and the Act of 1784, in which a similar special provision was made in the case of a glebe in Augusta county. The question of the sale of the glebes was discussed upon constitutional grounds, but behind these was the feeling among dissenting denominations, that the Episcopal Church in possessing the glebes was enjoying particular privileges, and the feeling against the Established Church, which was well founded before the Revolution, was continued against the Church of England's successor. The opponents of the glebe system argued: "1. That most of the glebe lands were originally purchased with money levied upon the people at large, and that consequently, whenever a majority of the people desired a sale of the lands, they should be sold and the money applied to such other use as might seem best to them. 2. That, if the church was

permitted to retain the property, a certain pre-eminence and superiority was thereby conferred, which was odious in a republic and inconsistent with its institutions. 3. That the fourth article of the Declaration of Rights of Virginia asserted, 'That no man or set of men are entitled to exclusive or separate emoluments or privileges but in consideration of public services,' but the enjoyment of the glebes did confer upon the church 'exclusive emoluments from the community,' and was consequently unconstitutional." The case of one parish, that of Fairfax, where, by a special Act in 1801, the overseers attempted to dispose of the glebe, was carried to the Supreme Court, which declared the Act unconstitutional on the ground that the Protestant Episcopal Church had succeeded to the right to property of the Establishment, and being a private corporation had all the privileges of such. The decision, which was written and delivered by Judge Story, asserted that the Supreme Court could not admit "that the Legislature can repeal statutes creating private corporations, or confirming to them property already acquired under the faith of previous laws, and by such repeal can vest the property of such corporations exclusively in the State, or dispose of the same to such purposes as they may please, without the consent or default of the corporation." This judgment was in accord with justice and with practice elsewhere, for in Maryland the right to the glebes remained in the vestries of the Protestant Episcopal Church and is still enjoyed. It has been thought advisable to treat the question of glebes at this length in order to call attention to the Act of Virginia legislators which stretched the doctrine of eminent domain to the borders of modern socialism.[1]

How towns were brought into existence will be told in another chapter, but the history of land tenure in towns belongs properly in this place. There are indefinite allusions

[1] The history and documents relating to the glebe question can be found in Meade's "Old Churches and Families of Virginia," Vol. II., Appendix.

to the existence of town lands under the Company's rule, but by what title they were held or in whom vested cannot be accurately determined, and, therefore, the real history of them begins with the Act of 1680, by which each county was ordered to buy at a fixed price fifty acres of land for a town, which land was to be vested in trustees. A similar Act was passed in 1691, and although it was suspended, the lands which had come into possession of trustees were confirmed. After the seventeenth century had closed, many small towns were erected and the system of land holding was as follows. By Act of Assembly the county courts laid out in half acre lots a site for a town. The land, which had either been appropriated from the public domain or bought from individuals, was vested in trustees, who sold the lots in fee-simple, and appropriated the proceeds in paying for the land or in defraying public expenses. Those who bought lots had to build upon them and inclose them within a certain time or forfeit them. In the towns, spaces were generally left for a market house, church and other public buildings. Frequently individuals laid out some portion of their estates for towns, and in such cases no trustees were appointed unless difficulties about the laying out of lands arose, but the titles to the lands were confirmed. When the town became a borough the title to the town lands was transferred to the corporation. There was little recognition in Virginia of land community, which existed in New England and which was the oldest form of land-holding among the ancestors of the English. Fifty acres had been set apart in 1634 as a common for the inhabitants of Stanley Hundred. The Act for establishing Williamsburg provided that at the ports on the James and York rivers sufficient land should be reserved as a common, probably to be used as a quay as was done in other towns, and the Act for establishing Richmond made provision for a common, which however was vested in William Byrd, the original proprietor of the land. With few exceptions, the idea of common lands seems to have been in the back ground. Before leaving this

section it will be well to mention, as showing the prevalent opinion of legislators, an Act for dwelling together passed in 1701. As an encouragement to settlers upon the frontiers, it was enacted that if persons should organize themselves into societies, they could possess thirty thousand acres of land to be held in common. Two hundred acres of these lands were to be set apart for house lots. The Act stated that "there shall be granted to every such person untill the said quantity of thirty thousand acres shall be completely taken up, a right to two hundred acres of land next adjacent at his choise, together with halfe an acre to seat upon and live in not before seated upon within the said two hundred acres to be laid out for the cohabitation."[1]

Grants to Individuals.

Last, but not least, is to be considered the land holding of the vast number of individual proprietors, who held tracts of land of from fifty to two thousand or more acres, and who formed the body of Virginia planters as distinguished from the merchants and the money-seeking proprietors. With the exception of the members of the Virginia Company, most of the first settlers came to Virginia in the capacity of servants, and were employed upon the public lands of the colony. Those who served five years were entitled to one hundred acres, or "his divident," and if such land was improved by seating and planting within three years, the planter had a right to one hundred acres more. Grants of land were made to those members of the Company who went to Virginia themselves or sent settlers, who rendered service of importance to the Company, or who invested money in it. Sir Thomas Dale instituted the system of general land holding by his allotment to every man in the colony three acres of land which he was allowed to work eleven months in the year,

[1] Hening: Statutes, Vol. III., p. 206.

upon payment of two barrels and a half of wheat for himself and each of his servants, and in the other month he was liable to be called upon for service in behalf of the colony. The inhabitants of New Bermudas were not included in this arrangement, but they were to work three years for the colony and then to have their freedom. Those who labored for the colony received a certain allowance from the store and could work their land one month in the year.[1]

The general system adopted by the Crown after the dissolution of the Company was to grant to each person coming to Virginia fifty acres of land, which were held upon the payment of an annual quitrent of one shilling for every fifty acres. The manner of taking up land was as follows. The person desiring land went before the county court and made affidavit of the number of persons he had brought into the colony.[2] The clerk of the court made a certificate of the same which was transmitted to the Secretary's office. If it was regular the petitioner was given a warrant which was shown to the county surveyor, who was required to lay out the lands where the petitioner desired, unless they had already been appropriated. Copies of the survey and warrant were

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[1] The way in which Sir Thomas Dale allotted the land cannot be precisely ascertained, as accounts by contemporaneous authors differ. The statement above is made after a careful comparison of the accounts by Hamor, [Narrative, &c., p. 17,] Smith, [General History, II., p. 17,] Rolfe [Virginia Historical Register, Vol. II., pp. 106–107].

[2] The following tradition regarding a grant to one Stover is told by Kercheval, in the "History of the Valley," p. 65. "On his application to the executive for the grant, he was refused, unless he could give satisfactory assurance that he would have the land settled with the requisite number of families within a given time. Being unable to do this he forthwith passed over to England, petitioned the King to direct his grant to issue, and in order to insure success had given human names to every horse, cow, hog and dog he owned, and which he represented as heads of families ready to emigrate and settle the land. By this disingenuous trick he succeeded in obtaining directions from the King and Council for securing his grant, on obtaining which he immediately sold out his land in small divisions at three pounds per hundred acres and went off with the money."

returned to the Secretary's office, where a patent was made out, which, upon presentation to the Governor and Council, being found correct and no objections arising, was signed by the Governor, and recorded in the office of the Secretary. But to secure the land the planter had to "seat" the tract, that is to build a house upon it and to keep stock for one year, and to "plant" it, by which was meant clearing and planting one acre of ground. If these conditions were not fulfilled within three years, the land "lapsed" to the government and might be granted to any person, and even to the original grantee, who should petition the Governor and the general court for the same, and whose petition was accepted. The lands of persons who died without heirs, or who were aliens, "escheated" to the crown, and if no title to the lands was shown, the land was granted to whomsoever the Governor and Council thought fit, the grantee paying two pounds of tobacco per acre as a composition. If a man died within the three years allowed him for strengthening his title, and left an heir, the county courts were empowered to take security from the guardian that the quitrents should be paid, and three years should be allowed the orphan after coming of age to make the title good. The bounds of lands were marked by water courses, rocks and blazed trees, and to preserve these marks it was necessary to "procession" the lands, but when this had been done three times, the bounds were unalterably fixed.[1] There were certain special grants of land, as the one hundred and thirty-three acres to each of the French Huguenots, who settled at Manican town, and the bounties to soldiers in the war of 1763, and there were certain irregular modes of acquiring land, such as by "corn right," by "tomahawk right," and by "cabin right," followed by the settlers in

[1] Hening: Statutes, Vol. I., pp. 274, 291, 466; II., pp. 244, 315; IV., p. 31; V., p. 428. Beverley: History of Virginia, pp. 225–227, Virginia Historical Register, Vol. II., pp. 190–194. Brock: Spotswood Letters, Vol. I., p. 23. Jefferson's Works, Vol. I., p. 139.

the valley before Fairfax asserted his claims, but these cannot be included in the regular system. Lands could be held in fee-simple, in fee-tail and by "courtesy of England,"[1] but in the eighteenth century the system of entail and primogeniture predominated and caused a great deal of trouble, as entail could be barred only by Act of Assembly, but it was not abolished until 1785, in which year, also, the inhabitants of the Northern Neck were freed from paying quitrents and composition.

In discussing the revisal of the land laws of Virginia, Jefferson wrote: "Our ancestors, however, who migrated hither were laborers, not lawyers. The fictitious principle that all lands belong originally to the King, they were early persuaded to believe real, and accordingly took grants of their own lands from the crown." The doctrine of the King's right was undisputed at the time of the settlement of Virginia, and if the settlers were not lawyers, their Assembly managed to introduce a complicated system of land tenure, which, in some respects, was followed more strictly than in England, where the legislation probably originated or was suggested.

[1] "A tenure by which if a man marry an inheritrix, that is a woman seized of land, and getteth a child of her that comes alive into the world, though both the child and wife die forthwith, yet if she were in possession, shall he keep the land during his life, and is called tenant *per legem Angliæ* or by the *courtesy* of England." Cowell, in Johnson's Dictionary.

III.

THE HUNDRED.

The origin of the English hundred as a territorial division has never been satisfactorily explained. Traces of the institution are to be discovered in the hundred assessors of the German *pagus* and the hundred warriors sent to the host, but here the word has a personal signification. Stubbs, after discussing the various views as to the connection between the German personal and the English territorial hundred, draws the conclusion that, "under the name of geographical hundreds, we have the variously sized pagi or districts in which the hundred warriors settled," with boundaries determined by grants to chieftains, the possession of surviving Britons and other causes. Whatever may have been the origin, the institution was recognized very early in the history of England and was probably one of the oldest local divisions of the conquerors.[1]

Equally involved in obscurity is the beginning of the hundred in Virginia, and the history of its various phases is rather curious, not only because it was the first English local division instituted in America, but besides having both a territorial and personal signification, it assumed different relations to the general government of the colony at different periods. The use of the word personally was no doubt due to the influence of the military character of the colony. The hundred was used as a kind of unit; thus, in 1609 Captain

[1] Stubbs: Constitutional History of England, Vol. I., p. 98.

Francis West led a hundred and odd men up the river to settle near the falls, while Captain John Martin was in command of a hundred men on the south side of the river in the Nansemund country.[1] A few months afterward, Strachey, engaged upon the martial code, wrote, "no lesse shall we read how that first & great commander over the colony of the children of Israel, conducting them from Egypt to make their plantation in the land of promise, appointed captains over tribes and hundreds."[2] It would be interesting to discover the stages of the transition from the personal to the geographical hundred, but several links are missing. Martin's company abandoned the settlement at Nansemund, which was thirty miles below Jamestown, but seven years later there appeared in the records the name of Martin's Hundred, which was, however, on the upper side of the river and but seven miles below Jamestown. Sir Thomas Dale may have been influenced by his strong instincts for martial regulations, when he "laid oute and annexed to be belonging to the freedom and corporation [of New Bermudas] for ever many miles of Champion and woodland in severall Hundreds, as the upper and nether hundreds, Rochdale Hundred, West's Sherly Hundred, Digges his hundred,"[3] and this act of his may have marked the change to the territorial basis. West's Sherly Hundred, which is elsewhere called West and Shirley Hundred, may have owed half of its name to the expedition of Captain Francis West in 1609, and when these facts are considered in connection with the instructions to Governor Wyatt in 1621, to allow none but the heads of hundreds to wear gold lace on their clothes, and the provision in 1660 that when a county should "lay out one hundred acres of land and people itt with one hundred tithable persons, that

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[1] Peter Force's Tracts, Vol. III., Lawes Diuine, Morall and Martiall, p. 14.

[2] Ibid., Vol. III., p. 36.

[3] Hamor's Narrative, &c., pp. 31–32.

place should send a burgess to the Assembly," there is room for the conjecture that in the beginning the personal hundred preceded and imposed its organization upon the territorial division of the same name.[1]

However that may have been, the territorial idea absorbed the personal, and, as a geographical unit, the hundred in Virginia corresponded somewhat in kind, though not in number and regularity, to the same division in Maryland some years afterward. In the sister colony hundreds were regular divisions of the county, though they were not symmetrical or equal in area, for their names, such as Herring Creek, Middle Neck, South River, &c., indicate that natural boundaries were at first adopted. When the parish system was imposed upon Maryland in 1692, the hundreds were used as the basis for the new division, but as population became denser the number of hundreds in the *county* were increased. Here even the personal idea crops out, but in the increase little regard was paid to parish boundaries, so that frequently parts of the same hundred were in different parishes. The confusion arising from this arrangement caused an Act to be passed by which county courts were empowered so to lay out the hundreds anew that no hundred should be in more than one parish. In Virginia, also, there was a connection between the parish and the hundreds, for in 1627 the minister and church wardens of Stanley Hundred made their report of marriages, deaths and

[1] Hening's Statutes, II., p. 20. In South Carolina a similar plan was proposed. Governor Johnson was directed in 1730 to encourage the building of towns. "Each town shall be formed into a Parish, the Extent whereof shall be about 6 miles round the Town on the same side of the River, and as soon as a Parish shall contain 100 masters of Families, they may send Two members to the Assembly of the Province." [A Description of the Province of South Carolina, Drawn up at Charleston in September, 1731, p. 125 of Carroll's "Hist. Col., S. C."] This plan seemed to have been unsuccessful, for in a work published in 1761, it is stated that "some towns, which by the king's Instructions have a right to be erected into Parishes, and to send two members are not allowed to send any." Carroll, etc., p. 220.

christenings, and the church wardens presented a man for immorality; a record of the year of 1700 shows that there was a parish of Martin's Hundred, but in both these instances, as was also the case in Maryland, the parish took its name only from the district in which it was laid out or which it included, and in Virginia had no institutional relation to the hundred.

The hundreds were not created with any attempt at regularity as to area, Martin's Hundred having been reputed to have 80,000 acres, Southampton Hundred which extended for almost ten miles along the upper bank of the James river, from Weyanoke to the mouth of the Chickahominy river, having 100,000 acres and Flowerdieu, or Flower de, Hundred, which was opposite Weyanoke and on the south side of the river, having 1,000 acres. Flowerdieu Hundred was the property of Sir George Yeardley, and after his death was conveyed by his widow to Mr. Abraham Persey, and Pers(e)y's Hundred was probably the same place, as it corresponded to Flowerdieu Hundred in situation and in the number of its acres.[1] Whatever may have been the original territory embraced in the hundred, the name was gradually restricted to

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[1] Burk: History of Virginia, Vol. I., Appendix. Hening: Statutes, &c., Vol. I., p. 145. Some authors speak of Southampton Hundred as lying on the Bay shore, but the writer has found but one allusion which would account for this. Stith, in his history, page 172, wrote that Smith's Hundred "lay in the Parts above Hampton, up into Warwick," and a few lines below that, the name of Smith's Hundred "was afterwards changed to the name of Southampton Hundred." It is probable that in the latter sentence he was referring to the body in England called Southampton Hundred, which seems to have been the same as Smith's Hundred, as may be seen from the following facts. In 1620, when the Virginia Company were debating the question of the education of the Indians, by means of funds given by "Dust and Ashes," it is recorded "that the corporation of Smith's Hundred very well accepted of the charge of infidels' children recommended unto them by the Court, . . . but . if the court shall please to take it from them they will willingly give £100," and further on it was advised "that it [the education of the Indians] should be wholly in charge of Smith's Hundred." Later, in 1621, the unknown donor of the money, £550, wrote that "the gentlemen of Southampton Hundred have undertaken

the actual settlement or collection of houses, in which form the name of one of the first hundreds is preserved to-day in Bermuda Hundreds with its one hundred and thirty-nine inhabitants.

The freemen in the old English hundreds elected their ealdorman, or hundredes-ealdor, to represent them in the shire-moot. In Virginia the hundred became the basis of a higher representation. In the first Assembly there were two burgesses from Martin's, Smythe's and Flowerdieu Hundreds, respectively, on an equality with those from the boroughs and private plantations. To the Assembly of 1629 Flowerdieu Hundred sent one burgess, Martin's Hundred sent two burgesses, and Shirley Hundred island and Shirley Hundred main, each sent two. In the Assembly which met in February, 1632, there was no burgess from Martin's Hundred, while there were two men representing the two Shirley Hundreds and two plantations, and one man representing Flowerdieu Hundred, Westover and Weyanoke. The practice of uniting adjacent settlements and plantations as an area for representation continued until 1634, when the county was instituted, and after which no burgesses sat for hundreds.

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the disposing of the said £550," and Sir Edwin Sandys, with reference to the letter, reported that the court had "resolved that it was fittest to be entertained by the societies of Southampton Hundred and Martin's Hundred," that Martin's Hundred had declined and that Southampton Hundred had "offered an addition of £100 more unto the former sum of £550, that it might not be put upon them." [Neill: Memoir of Rev. Patrick Copeland, pp. 25, 26, 27, 40, 41, 42, 43]. Aside from these facts, the writer's reason for believing that Southampton Hundred was situated above Jamestown is due to two statements: 1st. In the Appendix to the first volume of Burk is a list of corporations and persons owning land in Virginia, and the situation of the lands of Southampton Hundred is given as above. 2nd. In the list of persons slain in the massacre of 1622, the number slain is recorded by plantations, &c., beginning at Falling Creek and going regularly down the river to Mulberry Island, and in this order Southampton Hundred follows Martin's Brandon and precedes Martin's Hundred, and the plantations below it. Besides the hundreds in Virginia named here and elsewhere, there were also Berkeley Hundred and Bartlett's Hundred.

There does not appear to have been any such relation of the hundreds to the county as existed in Maryland, except, perhaps such as existed in Charles City county, which, as will be shown in another chapter, developed from Charles City. The early Virginia planters wrote in 1625 (?) of their "buildinge Charles Citty and Hundred," under the direction of Sir Thomas Dale, of their residence at "Charles Hundred," of Governor Yeardley's finding, upon his arrival, "Charles Citty and Hundred," among the existing forts, towns and plantations, and that then "Charles Citty" had only six houses.[1] This interchangeable use of the words "hundred" and "city" would indicate that they were identical, and if this was so, Charles City Hundred bore the same relation to Charles City county, as did Martin's Hundred to Martin's Hundred parish, that is, it gave the name to and was included in the new division.

There is no record of the hundreds having been an area for judicial or military purposes, unless it be in the law passed in 1624, that monthly courts should be held in the corporations of Elizabeth City and Charles City by the commanders and commissioners of the Governor, and in the general practice of the commanders, having charge of the military and minor police matters in their respective plantations. But here the commanders for military purposes and the commissioners for judicial and police matters in the plantations, in which were doubtless included the hundreds, were not the elected hundred-men or hundredes-ealdors, of England, but they were the appointees of the Governor. Two hundred and fifty years and more were to pass before the people should elect their local magistrates in the townships, districts, or, as Jefferson called them, hundreds.[2] Edgar and Ethelred used the hundred as a district, or as the integral parts of a district for levying taxes, and in Virginia, Mr. Peter Ridley was in 1647 appointed as collector of the public levies for "Martin's Hundred and this side of Kerls' creek," but there is no rea-

[1] Colonial Records of Virginia, pp. 76–77. [2] See Conclusion.

son for believing that the hundred was a regular division for fiscal ends.

In the records of the Virginia Company of London, are allusions to a peculiar phase of the Virginia hundred. In 1618, when the colony was so "weake and the Treasury utterly exhaust Itt pleased diuers Lords, Knights, gentlemen and citizens (grieued to see this great Action fall to nothinge) to take the matter a new in hand and at their priuate charges (ioyninge themselves into Societies) whereof the first of any moment called Southampton Hundred hath 320 persons sent unto itt, the next called Martin's Hundred above 200." These organizations, which were called at different times the "Societies of Martin's Hundred," the "adventurers of Martin's Hundred," the "gentlemen of Southampton Hundred," &c., were formed in England and busied themselves in sending colonists to the places of the same name in Virginia and seeing that they repaid, not directly, the investment and helped to strengthen the colony. These societies perished with the dissolution of the Company.[1]

We have considered the hundred in all its forms. To emphasize them and to impress the fact of their existence upon the reader they will be enumerated in succession. There are statements implying the use of the word hundred in Virginia as a military division, as a place to be settled by a body of persons originally a hundred men or heads of families, as a member of an incorporated town, as an area for representation and for rating, as related indirectly to the county and the parish, and as giving a name to sub-societies of the Virginia Company who cared for its settlement and cultivation.

That the hundred did exist is not surprising, for aside from legislation of direct English origin for the introduction of institutions, the colonists were unconsciously led by their English instincts to reproduce some of the old customs, laws and institutions, of which the hundred was but an example.

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[1] Neill: Virginia Company, pp. 176, 237, 247, 281, 325.

IV.

THE ENGLISH PARISH IN AMERICA.[1]

The word parish is derived through the French and Latin languages, from the Greek *παροικία*, which originally meant either a collection of men not enjoying full rights of Greek citizenship, or a class distinct from the rest of the people. In the latter sense, it was the designation of a body of Christians living in a city and its neighborhood, to distinguish them from the other inhabitants. Gradually, as Christianity spread over western Europe and the church organization became more determined, it was adjusted to the civil and military divisions bequeathed by the Roman provincial system, and the *parochia* acquired a territorial meaning and was applied to the district under the care of a Bishop. Under the Roman system any organization such as the modern parish would have been almost impossible, and one of the most potent preventives would have been the centering of all things

[1] This chapter appeared originally in May, 1883, in the American Repository of History. It was afterwards used in an article for the CHURCH CYCLOPAEDIA, and by the courtesy of the editor, Rev. A. A. Benton, and of the publishers, Messrs. Hammersly & Co., Philadelphia, appears in this monograph. The whole of the encyclopaedia article is not reprinted but the title is preserved. In the study of Virginia parishes great help has been obtained from Bishop Meade's invaluable work, "Old Churches and Families of Virginia." Want of time has compelled the writer to make use of the Bishop's treatment of original records, instead of consulting the documents themselves, which are preserved in the library of the Virginia Theological Seminary, at Alexandria.

ecclesiastical and lay in the hands of the priests, and through them in the Bishop. It is not known positively when the *parochia* was introduced into England, for the whole subject of introduction thither of church forms is obscure, but Gildas, writing about the sixth century of our era, used the word to denote the territory under the jurisdiction of the Bishop in Wales.

The local territorial divisions introduced into the island by the English were but reproductions or developments of the conquerors' organization in Germany, and they were but little if in any degree, affected by the Roman-Celtic institutions, which they supplanted. The Christian church was nearly crushed, but Christianity was brought back into England from two directions and by different methods. The policy of the Roman missionary was to convert the ruler and to organize downwards. The practice of Aidan and his successors in the North, was to labor among the people, establishing mission stations here and there, and to work upwards to the King. The two methods modified by each other resulted, according to Stubbs, in the priest being naturally confined in his ministrations to the territory of the township, or of a number of townships united, while the Bishop superintended the religious work of the shire or of the kingdom.[1] Thus the civil and ecclesiastical organizations, with no apparent intention on the part of the authorities in so ordering, were developing side by side, and the Englishman's duties to Church and State were becoming more nearly related, so that the laity probably began to claim a right to participate in the directing of church affairs. The tendency to coalesce was greatly increased, though somewhat modified, by the unifying work of Theodore of Tarsus, the traditional founder of the English parish in its restricted sense. But Pearson asserts that *parochia*, in England, meant, up to the time of the Norman Conquest, the Bishop's province, and it is found with this meaning in the writings of

[1] Stubbs: Const. Hist. Eng., Vol. I., pp. 85, 227.

Lanfranc, Anselm and other ecclesiastics, although the smaller district, with its civil and religious organization, must have been in existence.[1]

One result of the Conquest was the conferring upon lords of land the right to found churches on their lands, which corresponded frequently in extent with the old township, and by the end of the twelfth century "the Parochial system, with all its legal apparatus, advowson, presentation, institution, induction, sequestration, etc." had begun to displace the diocesan system. From that time the parish may be considered as the ecclesiastical form of the township, for the boundaries of the parish and the original units were identical, and in later days the personality of the older institution was absorbed into that of the younger. When the people of the township assembled to consider the affairs of the church, the meeting was called a Vestry, from the place of meeting, originally the *vestiarium*, or apartment for clerical garments. Many of the powers and duties of the township were bestowed upon the courts and officers of the manor, and the vestry had to attend to all business, civil as well as ecclesiastical, that did not come under the jurisdiction of the manor. This rule brought about a confusion of the terms parish, vill and town, though the word parish was used generally in referring to church matters. From its beginning, the ecclesiastical side of the parish was inclined to supersede the civil side, and this was the condition of things at the time of the first English settlements in America.

The various classes and kinds of colonists may be, for convenience, considered as divided into two main branches, the first of which was formed of those who settled in New England, whose doctrines and practices have shaped the ideas of what to-day is spoken of as the North, the second consisting of the first English dwellers in the regions south of the present Mason and Dixon's Line, who influenced the South.

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[1] Pearson: Historical Maps of England, p. 58.

Massachusetts may be taken as representing the former, Virginia as a type of the latter. The colonists of Massachusetts, originally members of the Church of England, came to America either out of sympathy with the Establishment, or learned in their new home to cherish another form of church polity. The political unit in the colony was the township. But Parker wrote: "They founded a civil State upon a basis which should support the worship of God according to their conscientious convictions of duty; and an ecclesiastical State combined with it, which should sustain and be in harmony with the civil government, excluding what was antagonistic to the welfare of either.[1] In this union of the State and the Church there was produced an ecclesiastical government which was a combination of Independency and Presbyterianism, and which, in course of time, developed into Congregationalism. Such terms as "Church and Town," and "Members of the Church and Inhabitants of the Town" did not signify, therefore, an English parish, but an English township with provisions for the maintenance of religion. The word parish was used in New England to denote the township from the ecclesiastical point of view, as well as a portion of a township not possessing town rights—but this was not the true English parish. The township of New England was the parish of England, shorn of its ecclesiastical powers; the parish of Virginia was the English parish stripped of some of its civil functions. In Virginia the parish as it existed in England was instituted, although, on account of the peculiar circumstances of the young colony it was, as a local unit, preceded in time of organization by the military and civil divisions, and, in consequence, never possessed civil powers entirely equal to those of the same institution in the mother country. Virginia was settled ostensibly for the purpose of founding an English nation and of propagating Christianity. A minister of the English Church accompanied the men who

[1] Lowell Institute Lectures, p. 403.

succeeded in making the first permanent English settlement in America, destined as years rolled on to become the leader in a defense of English liberties. At first there was little need of church government, as the minister may have been regarded as a chaplain to the Governor. As more men arrived and new settlements were made from Jamestown, the centre, ministers were sent to the most important of them. Then began the coöperation between the Church and the civil power, that had obtained for centuries in the mother country. This was strengthened by the introduction into the colony of the laws "Diuine, Morall and Martiall," by which the Church was taken under the direct protection of the military authorities. The minister chose "foure of the most religious and better disposed as well to informe of the abuses and neglects of the people in their duties, and seruice to God, as also to the due reparation and keeping of the Church handsome & fitted with all reuerant obseruance thereunto belonging."[1] The captain of the watch in the town had to take care that all attended service, and could go in and out private houses to see that no one was neglecting religious duties or profaning the Sabbath by gaming or otherwise. These laws were efficacious in bringing order out of the confusion in Virginia; affairs improved, and the martial discipline fell into disrepute. A

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[1]Force's Tracts, Vol. III., "Lawes Diuine, Morall and Martiall," p. 11; also letter of Rev. Mr. Whitaker, quoted by Neill in his "Notes on Virginia Colonial Clergy," p. 4.

The writer has collected the following statements to prove that the martial law was executed in part at least. Strachey wrote: "I do in the meantime present a transcription of the Toparchia or State of those duties by which their Colonie stands regulated and commanded, first established by Sir Thomas Gates . . . the 24 of May, 1610, exemplified and approved by the Right Honorable Sir Thomas West, Knight, Lord Laware, Lord Governour and Captain Generall, the 12 of June, 1610. Again exemplified and enlarged by Sir Thomas Dale . . . the 22 of June, 1611."—[Lawes, &c., p. 5.] . . . . put in execution by our Lord Generall Laware during his time of one whole yeere of being there."—[Ibid., p. 7.] The planters of Virginia wrote, about 1625, that "Sir Thomas Dale immediately upon

milder and more popular government was established in 1619, and the first Assembly made provision for the Church. Governor Wyatt was instructed in 1621 to "keep up the Church of England as near as may be," and the first acts of the Assembly of 1624 were for the benefit of religion. Places for worship were to be provided in every plantation, penalties were imposed upon ministers or laymen who failed to attend divine service, and the minister was protected against poverty and personal injury. The word *parish* now appeared for the first time in the laws; "there shall be in every parish a publick garnary, unto which there shall be contributed for every planter exceeding the adge of 18 years alive, at the crop after he hath been heere a year, a bushel of corne, the which shall be disposed for the publique uses of every parish by the major part of the freemen."[1] Three men were to be appointed in every parish to see that sufficient corn was planted. From this time on there were various enactments having reference to parish matters, and most of them were reënacted in the Assembly that met in March, 1662, when the country was returning to its normal condition. The laws then made afford, therefore, a favorable starting point for the history of Parish.

The original parishes were laid out in the same manner and often with the same bounds as the old plantations; that is,

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his arrival to add to that extremitye of miserye under which the Collonye from her infancie groaned, made and published most cruell and tiranous lawes, exceeding the strictest rules of marishall discipline, which lawes were sent over by Sir Thomas Dale to Sir Thomas Smith, by the hande of Mr. William Strachey . . . and were returned in print with approbation for our future government as in diuers bookes yet extant more fully appeareth."—[Col. Rec. Va., p. 74.] In Stith's History, which is based partly upon Smith, are the statements that "Marshall Law was then the Common Law of the Country," and that "Sir Thomas Dale being sadly troubled and pestered with the mutinous Humours of the People caused them [the martial laws which Stith elsewhere wrote were 'chiefly translated from the martial Laws of the Low Countries,'] to be published and put into Execution with the utmost Rigor."—[pp 112, 143.]

[1] Hening: Statutes, Vol. I., p. 125.

they extended many miles along the rivers, but only short distances into the interior. The population was denser in those regions, and the parishes having been designed for the people's benefit, followed them in their migration towards the mountains, and larger parishes were created as the country became less intersected by streams, and, consequently, as settlements were more widely scattered. In many instances county and parish had the same limits and covered immense areas. Thus the parish of Augusta, extending from the Blue Ridge to the Mississippi, was also the county of Augusta. In time the more closely settled counties were divided into smaller parishes, which, in turn, became the basis for new counties. The parish of Cumberland, in Lunenberg county, was divided in 1757, and Cornwall parish formed; in 1761 the original parish lost other territory which became St. James' parish. These three parishes became in 1764 the counties of Lunenburg, Charlotte and Mecklenburg, respectively, though still as parishes, retaining their former names. As this and many similar divisions were made to meet the requirements of new inhabitants, the enactments for the sub-dividing of counties and parishes, may be used as general guides in estimating the growth of population. When the parish church was found to be in a situation inconvenient for many parishioners, the Assembly was asked to allow a division of the old parish, and the inhabitants chose sometimes the men to run the lines. For some years parishes sent representatives to the House of Burgesses; afterwards this practice was allowed only when the parish had special measures to advance, and finally it ceased altogether, as it caused great and needless expense. In 1662 power was given to the counties and the parishes to make by-laws, which were to provide for circumstances to which a general law could not apply, and which, once made by the majority of the voting inhabitants, were binding upon all. But this arrangement did not succeed; so in 1679 it was enacted that, instead of each parish making its own by-laws, it should elect two representatives to sit with the justices of the county

court, in order to make by-laws for the welfare of the *county*. In this way the parish lost one of its principal powers of local government. Occasionally one discovers that courts of justice were held for the parish, but this was done by the appointment and under the guidance of the commissioners of the county court, who resided in the parish, and the custom was instituted to save people the trouble and expense they would have incurred in attending the regular county court.

Frequently in large parishes chapels of ease were erected, where services were held alternately with those at the "mother church." It would be interesting and instructive to study church architecture in Virginia, from a time when the Rev. Mr. Hunt preached under an old sail stretched over some poles, until the church in Williamsburg, "adorned as well as any church in London," had to be enlarged to accommodate the wealth and fashion that thronged the capital during the sessions of Assembly, or, as it was expressed earlier, because "the Parishion^{rs} are very much straightened & often outed of their places & seats, by dispencing with & allowing room for the frequent resort of strangers."[1] But the limits of this paper will permit only the briefest outline. The general rule adopted in building a church was to make it in the form of a cross, having the chancel at the east end and the pulpit on one side or at a corner. The pulpit was a huge affair, decked sometimes with a cloth of gold or purple, and towering above the high-backed pews or benches in the church. Some people, considering it due to their social position that they should have lofty seats at church, constructed little galleries along the side walls, and there they proudly worshipped.

Church then, as now, was often attended from motives other than religious. From early morning until service the parishioners might have been seen assembling from all directions, on horseback, in lumbering coaches, or, when the church was near the water, in boats. Young men arrayed in cos-

[1] Palmer: Calendar of Va. State Papers, Vol. I., p. 145.

tumes made after the latest London styles, crowd around some favored belle in high heeled boots, flounces and furbelows, and vie with each other in attempts to fascinate. Others stand around gossiping, arranging for business or pleasure in the future, or concocting schemes against the minister, whom they perhaps think has made rather personal remarks in his sermons. The shadow grows smaller on the dial-plate, the ancient sexton rings the bell and the people file into the church, where they are assigned seats by the church wardens, who have to see that all have places suited to their station, and, with the sheriff or other officers, prevent the worship from being disturbed. If it is an outlying church, the men who have brought their arms deposit them at the pew door, where they themselves sit ready at a moment's notice to rush out against any prowling Indian or wild animal. During the service the slaves bask in the sunshine outside, upon the plea of watching the horses or equipages, or they nod away in a retired nook of the church, utterly oblivious to what minister or clerk may be saying. It was customary for the clerk to read parts of the service, to make the responses and to "set the psalms," for it was a long time before organs were introduced into Virginia. The minister's sermon may have been edifying, but it was seldom calculated to arouse the ire of the hearers. This, however, was not always the case. One minister, who had some altercation with members of his vestry, and succeeded by sheer force in defeating them, preached at the next service from a text that expressed exultation at his victory. Another, having been locked out of church, delivered his sermon in the graveyard.[1]

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[1] "And I contended with them, and cursed them and smote certain of them and plucked off their hair." Meade: "Old Churches, &c.," Vol. I., p. 18. The Rev. Mr. Kay tells his own story: "An order of Vestry was signed by seven Vestrymen to discharge me and lock up the doors and Nail up the pulpits, Reading desks and windows of both churches which they did; and he himself with the other Six Vestrymen the next Sabbath day's forbad me and the Congregation to enter the Church, but at one of my churches

The church door, in accordance with an old English custom, was the place for advertising business of every kind, from a notice of a person's leaving the country, to the crying of hogs, boats, &c., that had been found astray. Either during or after service the minister or clerk published banns, read the Acts concerning adultery, &c., and gave notice of elections for the House of Burgesses. From necessity, or from carelessness or indifference a surplice was not always worn, and there was much laxity in ceremonies. A traveller to Virginia, in 1715, wrote that, "after the minister had made an end every one of the men pulled out his pipe and smoked a pipe of tobacco."[1] Whether this was the custom everywhere is not known, but it is suggestive of the good fellowship existing among men who enjoyed few such opportunities for counterbalancing the evil tendencies connected with their usual segregated life.

The minister who faithfully discharged his duties, represented a bond of union among the parishioners. But, sad to relate, the ministers who came to build up the Church in Virginia were not, as a rule, the best that the mother country had produced. To be sure, there were Latané, Hunt, Whitaker, Maury and a host of others, all pious and energetic laborers, but the temptations to neglect tasks and obligations were sometimes too great for clergymen who had been sent to America in the hope that in the purer atmosphere and surroundings of the virgin colony they would turn from evil ways. The bad character of the clergy had a great deal to do in fomenting and keeping alive, from 1662 to the outbreak of the Revolution, a dispute about the right of presenting ministers to vacant parishes. To allay the troubles the question was carried to England, and Sir Edward Northey delivered an opinion seemingly in favor of the parishes, but its meaning

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where were many of my friends they forced him and his six away, broke open the doors, pulpits and desks, and conducted me in." Papers Relating to the History of the Church in Virginia, p. 389.

[1] Maury: Memoirs of a Huguenot Family, p. 261.

was misconstrued by the authorities in Virginia, who foolishly endeavored to foist ministers upon unwilling vestries.[1] It must be confessed that some vestries were so controlled by the Governor as to carry out his behests. But the majority were so steadfast in maintaining their rights that they preferred to employ lay readers, and often turned away worthy men from a fear of seeming to yield. In some cases their actions were entirely inexcusable, and brought men under suspicion of diverting parish funds to their personal use. One vestry objected to a minister who had faithfully fulfilled the duties of his office many years, because of "a small Tang of the French" that rendered his speech unintelligible in the pulpit, but was no impediment to their understanding him when he asked them, as a test, to drink with him. Occasionally the Governor recommended a minister to a vestry, who accepted the candidate, if he upon trial gave satisfaction.[2] The vestries no doubt recognized the right of the Governor to induct a minister into a parish, that had remained vacant over twelve months, but they evaded the law by employing their rectors for a year at a time, and then if he showed that he appreciated the situation they continued to hire him, or presented him to the Governor for induction.

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[1] The decision given in 1703 may be found printed in "Papers Rel. to the Hist. of the Ch. in Va.," p. 127.

[2] The following extracts show how the Governor and the vestries acted. These are copied from Bishop Meade's work.

"WILLIAMSBURG, *April* 26, 1745.

"*Gentlemen:*—As your parish is at present unfurnished with a minister, I recommend to your approbation and choice the Rev. Mr. Scott, who in my opinion is a man of discretion, understanding, and integrity, and in every way qualified to discharge the sacred office to your satisfaction. I am your affectionate friend and humble servant, WILLIAM GOOCH."

Vol. II., p. 208.

"Ordered, that Mr. Vicaris the present minister, continue in his charge, and exercise his ministerial functions until the next shipping, in hopes of his future amendment, he declaring his willingness then to leave the place if not approved by the precinct and vestry." Vol. I., p. 324.

In the early years of the colony ministers were supported by an annual levy of ten pounds of tobacco and a bushel of corn for each person who tilled the ground. In 1632 their salary was increased by the payment of the "20th calfe, the 20th kidd of goates, and the 20th pigge," which Hening called "tithes,"[1] and in 1690 it was fixed at not less than sixteen thousand pounds of tobacco yearly, and this was paid, until the Revolution, by most parishes. In certain counties, where little tobacco was raised, people were granted the liberty of paying their parish and other dues in money, and in 1758 an attempt was made to grant the same privilege to all. This greatly increased the contest between clergy and laity, and many objections then advanced were satisfied only by the war for independence. Quite frequently the minister, in accepting a parish, took into consideration the quality of the tobacco cultivated, and it is amusing to read that this parish was "Sweet-scented" or that one "Oronoco." To tell what kind of tobacco was the better, it is only necessary to say that the "Oronoco" parishes were more frequently vacant.

Two hundred or more acres were bought by, or given to, the parish for a "glebe." On it were erected a dwelling-house, negro quarters and a kitchen. Sometimes the necessary slaves and stock were supplied. The Rev. Duell Read, when he vacated his parish in order to return to England, gave "four milch cows and calves, four breeding sows, a mare and a colt to be delivered on the glebe of said parish to the next incumbent." Certain members of the vestry had years before agreed to "mark one cow calf with a crop in the right ear, to be kept as well as their own cattle until they be two years old, then given to the vestry as stock for the parish."[2] It was the duty of the incumbent to keep up the glebe land, but unless a well disposed vestry chose to relieve him, he either ruined the ground by successive crops, so that a new glebe had to be pur-

[1] Hening: Statutes, Vol. I., p. 159.
[2] Meade: Old Churches and Families of Va., Vol. I., p. 359.

chased, or he allowed the whole property to run to waste. There were few, if any, parochial libraries for the benefit and entertainment of the minister, and, indeed, books would have been of small value to many of the clergy, whose spare moments were occupied in drinking bouts and the usual accompaniments, in answering charges before the county court or the Governor, or in gadding about in quest of anything to relieve the monotony of their life, thus in all respects equalling their brothers in England. A baptism, wedding or burial was hailed as a blessing, save when a long journey on horseback had to be undertaken. Such ceremonies were made occasions for the assembling together of friends and neighbors. John Washington quaintly wrote in 1659 that he was unable to attend a court at St. Mary's, in Maryland, because "All ye company and gossips being already invited" to witness the baptism of his son, he had to be present to receive congratulations and to perform the agreeable honors of host. Forty shillings were paid for the delivery of a funeral sermon, "which," wrote Hugh Jones, "most of the *middling People* will have."[1] In large parishes it was customary for individuals to have private burial places, though many bodies were buried in the churchyard, and sometimes by permission of the vestry in the church; and it was not unusual for a faithful rector to be laid to rest within the chancel, where he had ministered. As people had to journey from afar to attend funerals, a meal was prepared for the guests, at which occasionally some were overcome by their potations.

The duties of the clerk who assisted the minister were multifarious. In the absence of the rector he could perform all the offices of the Church, except matrimony and the two sacraments, he sometimes published banns, catechised the children and ignorant persons, kept a record of all births, marriages and deaths, sometimes acted as clerk of the vestry and collector of parish levies, and saw that all leaves and other rub-

[1] Hugh Jones: Present State of Virginia, 1724, p. 72.

bish were cleaned away from the church yard. But minister and clerk seemed to sink into insignificance before that august and closely organized body, "the twelve lords of the parish," the Vestry.

In 1643 a law was passed requiring a vestry to be held in every parish, for the care of the church, laying of levies, &c., and "That the most sufficient and selected men be chosen and joyned to the minister and church wardens to be of that Vestrie."[1] The number of vestrymen varied, and, even after the law of 1660, limiting the number in each parish to twelve, had been passed, there was some irregularity. Thus in 1707 a dispute in Charles parish, York county, revealed the fact that there were eight vestrymen in each of the two precincts, that then formed the parish. The vestrymen were elected by the freeholders and householders "paying Scatt and Lett in the parish." The sheriff presided at the elections to prevent all riotous proceedings, to receive the vote, an account of which he transmitted to the Council. Vestrymen were chosen for an indefinite term, although the Assembly during Bacon's regime tried to reduce their time of service to three years at a time, and thereby to obviate evils resulting from long tenure in office; for vestries filled vacancies in their own body and could be dissolved only by Act of Assembly. Many of the renowned sons of Virginia were at one time or another vestrymen, and it is recorded that Washington was a member of two vestries at the same time. Vacancies seldom occurred except by removal, by death, or from old age, which necessitated a withdrawal from the public service. Some made the office of vestryman a step towards obtaining political honors. The House of Burgesses was often controlled by men who were also vestrymen, and Bishop Meade ventured the statement, founded upon careful study, that in the Virginia Convention of 1776 there were not three persons who did not hold that office. The newly elected vestrymen took the oaths of supremacy,

[1] Hening: Statutes, Vol. I., p. 240.

allegiance, abjuration, &c., and subscribed the test. There are many objections made to long continuance in office, but it must be acknowledged that a man, who had done his duty as vestryman for perhaps thirty years, was preëminently qualified by long experience and matured knowledge to conduct and instruct younger men in parish affairs. In many cases the office descended from father to son, by no right save that of merit or of inherited influence.[1]

The vestry met at least twice a year at the church, vestry-house, or convenient private dwelling. At the Easter meeting church-wardens were appointed and the accounts of the preceding year examined. The meeting in the fall was for the purpose of apportioning the annual levy. At that time the various expenses of the parish, including the minister's salary, provision for the poor, &c., were added together, and the whole amount, divided by the number of tithables, determined how much each had to pay. The minister and poor or infirm persons were excused from paying tithes. Some items in the list of parish expenses are very amusing, as, for instance, "Ord'd. That the Ch. Wd's agree with any person for the Cure of Pridgeon Waddle's Nose—not exceed'g ten pounds."[2] From another it is discovered that two quarts of brandy were required for the burying of a poor woman, and there are many showing how paupers were kept and treating of the binding out of orphan or bastard children. Often persons took care of their own children at the parish expense, and one entry states that fifteen hundred pounds of tobacco were paid a woman "for Mary and Susanna

[1] The writer of an article in the "Century," (Vol. XXV., p. 180,) would probably call such an arrangement perfect. In speaking of the officers of the Supreme Court he makes the extraordinary remark, "An excellent civil service system prevails among the minor employees, some of whom are the sons and grandsons of former clerks and messengers. The strife for office, which is one of the greatest evils of public life in this country, has never invaded the precincts of the Supreme Court."

[2] Brock: Vestry Book of Henrico Parish, p. 140.

Jeffs, children of Sarah Jeffs, in full for the time she has kept them, and to indemnify the Parish from all charges for keep'g and Bringing up the said children for the time to come, they being now bound Apprentices to her."[1] The vestry appointed collectors of the levy, who gave bond and received a fee of ten per cent. The church-wardens usually served in this capacity, but frequently the sheriff or a special collector.

Once in every four years the vestry, by order of the county court, divided the parish into precincts, and appointed two persons in each precinct to "procession" the lands. These surveyors, assisted by the neighbors, examined and renewed, by blazing trees or by other artificial devices, the old land-marks of the fathers, and reported the result to the vestry who recorded the same in the parish books. This proceeding, similar in many respects to the ancient custom of perambulation in England, was instituted for a similar purpose, and was absolutely necessary for preserving boundaries in a country where few fences were used except to protect the house-garden or to keep hogs and other live stock from running abroad.

The vestry had also to provide for the maintenance of the poor. In the most flourishing days of the colony it was an easy matter to find accommodations in private houses for the few indigent folk of the parish, especially as the vestry paid for their keeping from the proceeds of the levy or of lands and other property bequeathed to the parish. The poor had to be supported by the parish where they lived, and if they wandered into a strange parish, they were conducted back to their own by a constable. Children, whose parents were unable to bring them up properly, were bound out by the vestry. The persons to whom they were apprenticed promised to instruct them in religious principles, and the "art and mystery of some trade," while the children, on the other hand, were bound to do all they could for their master's welfare, and to avoid all the temptations to evil that tippling houses or

[1] Ibid., p. 144.

taverns were supposed to offer. But the element in Virginia character and Virginia laws, that tended towards the accumulation of wealth in the hands of a few, naturally resulted in course of time in an increase in the number of the poor. In 1755 a law was passed, which, if rightly administered, would have remedied many evils. Workhouses were to be built in every parish, where poor persons and vagrants were to be employed at something that would help to maintain them. The vestry had the right of making regulations for its workhouse, and all offenders against the rules were to be whipped. The most obnoxious requirement was that the poor should have some distinguishing badge. This measure was not generally successful and the record books still show that the old system continued in force. There were, however, some exceptions. The vestry of the upper parish of Nansemund county expended the proceeds from a sale of lands and stock in building a "house for the reception of divers poor persons, who receive relief from the said parish, and for educating and maintaining several poor children,"[1] and also made rules for its government. But during the Revolution it was such a difficult matter to collect sufficient funds to pay parish charges, that in 1778 the vestry was ordered to sell the old workhouse and grounds attached, and to devote the amount realized to lessening the levy. In some parishes were free or charity schools, of which the minister, vestrymen and wardens were the trustees, and they appointed masters who taught "English and Writing." Sometimes, for pecuniary reasons, the minister kept a school at the glebe house, or acted as tutor in a private family. Vestrymen were not allowed to act as lay readers, but some, resigning their office, went to England to study divinity, and, having been admitted to orders, returned to officiate in their own parish. The vestry was aided and represented in most of its relations to parishioners by the church-wardens.

[1] Hening: Statutes, Vol. VI., p. 519.

Church-wardens existed in Virginia before vestrymen. The four assistants to the minister during the martial government were probably their prototypes. Mention is first made of them in the record of the proceedings of the first Assembly, but nothing is said about the manner of appointing them. In 1632 it was ordered that they be *chosen*, probably by a meeting of all the parish, for, up to that time and even later, there was no need of a representative vestry, as most of the parishes were confined to the small plantations lying in the vicinity of Jamestown, and so all inhabitants were within easy access of the place of worship. Though the church-wardens preceded the vestry as historic factors in Virginia and as regards some duties, yet after select vestries had been organized they appointed their church-wardens as their agents for disbursing parish funds, communicating with the Governor, or for attending to various other matters, which engaged their attention or appertained to their office. When parishioners failed to elect a vestry, the county court appointed the church-wardens and sometimes sidesmen to assist them. The minister and vestrymen chose annually from their body two church-wardens. The election was held at Easter and the retiring wardens had to give an account of all their dealings before they were discharged. Some vestries re-appointed one of the wardens who had served a year, that he might act as counsel to the newly chosen one. This was an excellent idea, as it no doubt prevented many annoyances that would have resulted from inexperienced persons taking entire charge of affairs, and it may have had some connection with the later distinction between Senior and Junior wardens, but it gave neither warden greater power than the other possessed, and both were supposed to work in concert. The oath required of them gives a general view of their duties and will, therefore, be quoted at length: "You shall sweare that you shall make presentments of all such persons as shall lead a prophayne and ungodlie life, of such as shall be common swearers, drunkards or blasphemers, that shall ordinarilie profane the sabath dayes or contemne

God's holy word or sacraments. You shall also present all adulterers or fornicators, or such as shall abuse theire neighbors by slanderinge tale carryinge or back bitinge, or that shall not behave themselves orderlie and soberlie in the church duringe devyne servise. Likewise they shall present such maysters and mistrisses as shall be delinquent in the catechisinge the youth and ignorant persons. So helpe you God!"[1]

While the people lived near each other the wardens could have easily carried out these injunctions, but when population had scattered and great rivers had to be crossed and long stretches of forest penetrated to reach all, they were impeded in their labor, which was in the main disagreeable. So they were assisted by the grand jury of the county, who often excelled them in ferreting out and bringing to justice law-breakers, though legal quibbles or the difficulty of obtaining enough proof frequently prevented conviction. At one time the following tests were proposed for determining when a minister had become drunk, which would have applied to laymen equally as well. "Sitting an hour or longer in the company where they are drinking strong drink, and in the meantime drinking of healths, or otherwise taking the cups as they come round like the rest of the company; striking and challenging, or threatening to fight, or laying aside any of his garments for that purpose, staggering, reeling, vomiting, incoherent, impertinent, obscene, or rude talking,"[2] all these were good evidences that the brute had conquered the man.

The church-wardens collected and disposed of the fines for drunkenness, Sabbath breaking, neglect to have children baptized, absence from church, &c. In some parishes stocks were ordered to be built for the accommodation of those disorderly characters, whom the wardens had to remove from church to prevent them from disturbing the worship or slumbers of members of the congregation. Stocks seem to have been a

[1] Ibid., Vol. I., p. 156.
[2] Papers Rel. to the Hist. of the Ch. in Va., p. 342.

favorite means employed for the punishment of offenders of all grades. In 1633, a man was ordered "to make a pair of stocks and sit in them several Sabbath days during divine service, and then ask Mr. Cotton's forgiveness, for using offensive and slanderous words concerning him."[1] Mortifying as this penalty must have been it did not approach, in severity, one imposed at an earlier period. A resident of Bermuda Hundred, who had vilified a gentleman, was sentenced "to have his tongue run through with an awl," to pass through a guard of forty men, each of whom was to butt him, and when he had reached the last in the line he was to be "knocked down and footed out of the fort." By these and other similar extreme measures was enforced reverence for those in authority. Bishop Meade tells of persons, who were compelled to stand during divine service, with marks of humiliation about them, and of a woman who was condemned to suffer twenty lashes upon her bare shoulders. Even those who concealed the fact of slander, which had been uttered, were whipped or imprisoned. Severe as were these penalties, they were suited to the times and exercised a wholesome influence over the restless spirit of the early colonists.[2]

The minister and church-wardens took cognizance of persons who fornicated or committed adultery. If, after proper admonition, the bad conduct was continued, the guilty parties were presented in court. In 1627 the wardens of Stanley Hundred presented a man for incontinency with a woman, whose husband was away, and the court ordered a separation.

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[1] Quoted by Neill and Meade from the court records of the later Accomac county.

[2] "March 25th, 1630, Tho. Tindall to be pillory'd 2 hours for giving my L'd Baltimore the lye & threatening to knock him down."

"1640. Stephen Reekes put in pillory 2 hours with a paper on his head expressing his offence, fined £50 sterling and imprisoned during pleasure for saying that his majesty was at confession with the L'd of Canterbury." Extracts from the Minutes of the Proceedings of the Governor and Council of Virginia, by Hening: Statutes, Vol. I., p. 552.

If a white man had improper relations with a negro woman, she was whipped, while the man was sometimes whipped, and frequently compelled to acknowledge his fault in church, that is, to do penance. Unnecessary travelling, "fowling," and any gathering but for worship on Sundays were prohibited, and the church-wardens in trying to prevent them, and in urging people to attend church, assumed the duties of the ancient captain of the watch. Persons who failed in their religious obligations were fined for the benefit of the poor of the parish. One man was presented for "driving hogs over the mountains on the Lord's Day," others for playing cards, pitching and playing, and some for cursing and swearing. Though there were instances of tumultuous proceedings in church, the services were generally conducted in an orderly manner, and summary punishment was inflicted upon unruly persons. A certain person was excommunicated for forty days because he put on his hat in church, but one who had committed such an offence probably cared very little about the loss of the privilege of attending worship. Notwithstanding the efforts of law-givers and vigilance of authorities many immoral actions were unpunished, and nothing else was to be expected from private individuals, when their own spiritual guides were themselves not altogether above suspicion. One well meaning individual left by will £100 to the vestry of his parish, who were to give the interest to the minister, on condition that he should preach four times yearly on the four cardinal sins of the community, and to make sure that there should be hearers, the interest of £25 more was to be divided between the clerk and the sexton if they were present when the sermons were delivered. One of the ministers who afterward enjoyed this legacy, it is said, could have brought a great deal of personal experience to light as illustrative material for his sermons.

The church-wardens had to bind out foundlings or bastards. Heavy penalties were imposed for bastardy, and if the woman refused to pay her fine, she could be sold for five years

by the wardens. The father had to remunerate the parish for any loss attending the care of the child, for the wardens paid some one to raise the unfortunates, and occasionally the mother consented to do so. In the vestry book of Henrico parish it is recorded that a woman was paid for keeping her two illegitimate children, and numerous other cases are mentioned. But in dealing with offenders against morality the grand jury gradually supplanted the church-wardens, who busied themselves chiefly in caring for the poor and in attending to matters more closely belonging to the church. They sought out impotent and needy persons, and either paid for their accommodation in private families or sent them to the work-house. They employed doctors to visit them in sickness and provided the necessary funds to have their bodies decently interred by the sexton, who, besides keeping the church and grounds in order, generally had charge of funeral arrangements. The wardens called vestry meetings, where they sometimes took precedence of the minister. In 1755, an imposter, who claimed to be the son of the "Duke of Wirtemberg" and a minister, went about the country and deceived vestries into employing him. The Governor, therefore, issued an order bidding church-wardens not to allow any one to officiate in their churches, unless he could prove that he was a regularly qualified clergyman.[1]

It must not be supposed that this was an expression of opposition to dissenters, for after the troublesome dissensions of the seventeenth century had abated—mere shadows of the dissensions in the mother country—Quakers, Presbyterians and other bodies of Christians not in accord with the doctrines and practices of the Established Church were tolerated in Virginia. A whole parish was given to French refugees, who enjoyed there for many years their own customs and modes of worship; the settlers at Germanna were granted similar privileges. Whitfield preached in Blandford church; Davies, in defending

[1] Virginia Gazette, February 28, 1755.

the cause of dissenters before the general court, charmed many and excited the admiration even of his enemies by his manly utterances and glowing eloquence. Many of that ilk attracted large congregations in parishes left vacant by reason of their distance from the capital, or because the tobacco raised there was of a quality inferior to that growing in the parishes situated between the York and the James rivers.

Church-wardens had charge of the decorations of the churches and made preparations for the celebration of communion, which was administered three times at least during the year, generally at the great feasts, and sometimes to the congregation in their pews, though this was not considered orthodox. At one time the minister and wardens reported to the Governor and Council the number of births, marriages, christenings, and deaths that had occurred in the parish, but after county courts had been instituted, the clerk appointed by the vestry kept a register of such events, and transmitted it annually to the court. There were passed a great many laws which defined the duties of church-wardens and vestrymen, but it has been thought best to refer to those only which, it is known, were executed; the character and the signification of the rest may be summed up in a few words. The parish in Virginia was a development, and changes were introduced now and then with a design of reproducing the old English customs, or of meeting some necessity peculiar to the new country, so that in social, civil, and religious relations Virginia resembled, more strikingly than any of the other American colonies, the prominent and superior side of old England. But a great deal of looseness prevailed, which the arrival of commissaries failed to remedy. Commissary Blair himself wrote that such difficulty was experienced in obtaining enough ministers for the colony, that for fear of losing those already there, many offences among the clergy were forgiven or else entirely overlooked.

Meanwhile events were hastening, and the time was near at hand for a struggle, that was to produce a nation. The

vestries for a century had contended that those who supported ministers and founded churches had the right to decide who should enjoy their contributions. With this idea deeply rooted and constantly in their minds, it was very easy to advance to the feeling that they should resist attempts to tax them without their consent. Within less than three months after the royal assent to the obnoxious Stamp Act, Patrick Henry, who two years before, as advocate of a vestry against a minister, had declared himself an opponent to tyranny in any form, offered those famous resolutions, which alone would have rendered his name immortal. Among those who were associated with Richard Henry Lee in the address and resolves of the patriots of Westmoreland against the use of the stamps, were many who had without doubt imbibed and developed their independent notions while filling the office of vestryman. A feeling of unrest gradually affected all classes, and was reflected in the doings of vestries. They became careless, and allowed dissenters to be elected into their number, while some were dissolved for misappropriating the poor rates, and others on account of illegal elections. Attacks against the Establishment grew stronger, and were made more frequently. In 1776 an Act was passed, whereby all dissenters were freed from contributing towards the salaries of clergy belonging to the Church of England, but the churches, glebes, and other property remained in possession of the vestries. As the vestries in several counties were dissolved, the care of the indigent devolved upon the overseers of the poor. When the Revolution began, churchmen, dissenters and all united in bearing arms for the common cause. Even some of the clergy, by nature conservative, resigned their cures, and entered the army as chaplains. One must be mentioned who, though not a member of the Established Church, was closely affiliated to it. He is known to the world as General Muhlenburg. A German by descent, a Pennsylvanian by birth, and a Virginian by adoption, he soon developed talents, which made him a leader in his county. Bishop Meade has

written a graphic account of his last sermon, which was a glowing appeal to resist oppression. He "concluded with the words that there was 'a time for all things;' a time to fight, and that time had now come. The sermon finished, he pronounced the benediction. A breathless silence brooded over the congregation. Deliberately pulling off the gown which had thus far covered his martial figure, he stood before them a girded warrior, and descending from the pulpit, ordered the drums at the church door to beat for recruits."[1]

Men had little time or inclination during the Revolution to busy themselves with church affairs, and the opponents of the Establishment had frequent opportunities still more to undermine the tottering structure. One by one the powers of civil authorities were taken from the vestries, and the inroads against ecclesiastical possessions culminated in the grievous Act of 1802, that threatened to destroy, and which most certainly did great damage to the Episcopal Church in Virginia. But opposition from without, internal dissensions and the separation of State from Church, aimed at in the new constitution, brought it to pass that the parish as a political institution perished in a struggle whose birth it had so greatly aided.

[1] Old Ch. and Fam. of Va., Vol. II., p. 314.

V.

COUNTY GOVERNMENT IN COLONIAL VIRGINIA.[1]

In the second charter to the Virginia Company the Governor was authorized "to use and exercise martial law in cases of rebellion or mutiny, in as large and ample manner as our lieutenants in our counties within this realm of England."[2] This sentence calls attention to the difference between the settlement of New England and that of Virginia. Many of the early settlers of New England had been townsfolk, or easily adapted their mode of living to the township idea, which was necessary among so few to insure mutual protection and assistance. The transfer of the governing power to the colony and the nature of the country still further strengthened the natural tendency to reproduce the older and smaller local independencies of the home-land. The settlement of Virginia, however, seems to have been conducted upon another principle. The clause in the charter, which conferred upon the Governor the powers of a county lieutenant, indicates that it was designed for the colony to become in the

[1] This chapter appeared originally in the MAGAZINE OF AMERICAN HISTORY, December, 1884, and is republished with the kind permission of the editor, Mrs. Martha J. Lamb.

[2] Hening's Statutes, Vol. I., p. 96.

course of time a kind of county dependent, through the Company in London, upon the Crown. From certain circumstances, similar in many respects to those which later affected the northern colonists, a small local life was absolutely required in Virginia, but this did not continue for any great length of time. As more colonists arrived they extended their settlements over the fertile country by means of its natural highways, the rivers, that had for ages been preparing the soil for easy cultivation by rich alluvial deposits. Little by little the new comers subdued or pacified by force or policy the original proprietors, and, encroaching upon the wilderness, amassed large estates, which were destined to become greater on account of the system of entail and primogeniture that, as some writers assert, was developed in Virginia to a higher degree than in England itself. With the retreat or extermination of the Indians disappeared the necessity of living in or near small fortified hamlets, and, as population spread over wider territory, the town broadened into the county, and people, institutions, soil and climate began to exercise upon each other a modifying influence, the result of which was Virginia of the Revolution. Imbued by birth or training with aristocratic notions, Virginia's founders allowed them full play in the land of their adoption, where there was no controlling class above or below them, and where every circumstance favored them. Where almost every extensive plantation had its own "landing," and the planter was his own factor and possessed and trained his artisans, there were no reasons why towns should be built. Even when attempts to lay off towns in every county were made, they were delayed and resisted upon the plea that tobacco culture would be hindered. The consequence of a small population scattered over a large area was that the county obtained predominance as a political unit, though smaller divisions retained a *quasi* recognition. A brief review of the history of the first fifteen years of the colony will show, in some degree, the causes of the origin and growth of the county system.

When one considers the relation of Virginia to the English crown, after the dissolution of the Company, that had controlled their affairs for economic purposes, he sees the Governor representing the King, the law, and to all intents the Church. This was a great advance upon the idea of an agent for a company, or of a county lieutenant, and the change in the attributes of the Governor had been brought about by the increase of population and wealth in the colony, and the consequent subdivisions of power, all concentrated into the Governor's hands.

After a few years' experience the mere merchant-venture, with its servants, tools and provisions in common, was found to be impracticable. Community of goods under the most favorable of circumstances has resulted in poverty or disintegration. What was true about many later pure communistic experiments was equally true in regard to the attempt in Virginia. Many of the adventurers, unused to manual labor, took it for granted that they would be fed from the common store; consequently they were not incited to make very great efforts for their own support, but were glad of any opportunity that might enable them to shirk work. The result was that they not only did not produce enough to repay the outlay of the Company, but were often hard pressed to provide food for themselves. Sir Thomas Dale hit upon a half plan to remedy this evil, *i. e.*, granting to each man three acres of land. The institution of private property in land, however greatly it may be deplored by modern socialists of the Henry George ilk, although imperfect, gave the colonists a feeling of permanence suited to their English instincts and encouraged a man to depend upon his own resources. A man could thus see his labor affecting directly himself, and, as land may be justly considered the basis of all property, it is not surprising that there soon began to be material comfort and a degree of prosperity which, in spite of set-backs from Indian wars and internal struggles, caused Virginia to be regarded as the granary of the North. The allotment of fifty acres

for each person brought into the colony gave it greater stability, and the people, having obtained a basis for operations, began to be restless under military rule, and, true to education, to desire a government more akin to English law and practice. The Company thought fit to acquiesce in this desire, and accordingly sent back, as Governor, Sir George Yeardley, with instructions to summon a body to make laws for the colony. In answer to his summons there assembled in the church at Jamestown, July 30, 1619, the first English legislative body in America. The members of the Assembly, as it was afterward called, sat together in the church, the Governor and Council occupying the choir or chancel. The larger portion was composed of twenty-two burgesses—two elected from each of the various hundreds, plantations or corporations situated along the Powhatan or James river, from Henrico to the Bay, and even from the small settlement in Accomac. The representative idea was expressed in the beginning, and did not, as later in Maryland, develop through the proxy system. As this Assembly was most important as marking an era in Anglo-American history, and as the body afterward represented the counties taken collectively, it may be well to treat the topic at this point.[1]

This primitive Assembly first turned its attention to the qualifications of its members. Captain Warde's seat was disputed and objection was raised against Captain Martin's burgesses. Warde was admitted, but the burgesses of Martin were excluded, because he refused to yield the claim in his patent, exempting him and his followers from the laws of the colony's charter. On Monday the laws which had been made

[1] Mr. Arthur Gilman, in his "History of the American People," p. 601, states that "The documentary basis of the Representative government established by Governor Yeardley in Virginia has not been preserved." This is surely a mistake, for the Virginia Historical Society published, some years ago, under the supervision of Messrs. T. H. Wynne and W. S. Gilman, the records of this Assembly, with an account of the discovery and the transcription of the MSS. in England.

up from the instructions to Yeardley and his two immediate predecessors were passed; religion, morality, relations with Indians, planting, manufacturers, were provided for. On Tuesday the Assembly sat as a court to try Thomas Garnett for indecent behavior, and he was sentenced by the Governor "to stand fower dayes with his eares nayled to the Pillory . . . and euery of those fower dayes should be publiquely whipped."[1] After passing more laws on Wednesday, trying Henry Spelman for endeavoring to stir up trouble among the Indians, and providing salaries for the speaker, the clerk, and the sergeant, the Assembly was prorogued by the Governor.

Although many things may have been said and done contrary to laws and customs of England, the Assembly should always be studied with great interest by the constitutionalist and historian, for with it began the real prosperity of Virginia, which encouraged the planting of other settlements in America. The laws which were enacted were characteristic of the men and of the times, and the Company in London could abrogate them, although it was petitioned that they might pass current until the Company's further pleasure was known. The growth of the Assembly is a question rather of constitutions than of institutions, but the relations of the county to it after it had become determined cannot be omitted in this paper. When the Governor called an Assembly, burgesses were elected from each county and from some parishes. The number allowed to each county was for a time indefinite, and was probably reckoned according to population. But in 1660 the number was reduced to two for each county and one for Jamestown, it being the metropolis, and the right of representation was afterwards conferred upon the boroughs of Williamsburg and Norfolk. The election was held at the court-house, and the sheriff presided and took the votes which freeholders cast, and those who were

[1] Colonial Records of Virginia, 1619–80, p. 24.

absent from the poll were liable to be fined.[1] "All voted openly and aloud without the intervention of the sneaking ballot. The candidates sat on the magistrates' bench above. The sheriff stood at the clerk's table below; called every voter to come, and how he voted. The favored candidate invariably bowed to the friend who gave him his vote, and sometimes thanked him in words. All over the court-house were men and boys with pens and blank paper, who kept tally, and could at any moment tell the vote which each candidate had received . . . The election over and the result proclaimed by the sheriff from the court-house steps, forthwith the successful candidates were snatched up, hoisted each one on the shoulders of two stalwart fellows, with two more behind to steady them, and carried thus to the tavern . . . where there was a free treat for all at the candidate's charge."[2] This is an account of an election in the beginning of this century, and it may be considered as characteristic of others earlier and later. The old time practice of marching in squads to the polls is still continued, if reports regarding the election of 1883 in Virginia are true. The people took great pride in sending a clever man to the Assembly, and expected him to look after his county's interests before those of the colony or of the crown. Such remarks as "I expect we shall have another election, as I am certain Mr. T—— will not be allow'd to take a seat in the house, where none but gentlemen of character ought to be admitted," show the sentiments of high-minded Virginians about their representatives.[3] Before going to the Assembly the burgesses received

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[1] The qualifications of voters were for some years shifting, but at last settled down to freeholders, and at the beginning of the Revolution the voters were those "possessing an estate for life in 100 acres of uninhabited land, or 25 acres with a house on it, or in a house or lot in some town." Jefferson: Notes on Virginia, p. 160.

[2] W. O. Gregory: from the Farmer and Mechanic of Raleigh, N. C., in the Baltimorean, Oct. 27, 1883.

[3] Bland Papers, Vol. I., p. 12.

the wishes and complaints of their constituents, and upon their return were wont in later times to report upon their own actions and the proceedings of the Assembly, which was composed of burgesses and the members of Council, who after 1680 sat as an upper house. Burgesses were free from arrest during its sessions, and were paid by the county which sent them. The Assembly, which was often called to pass acts favorable to the Crown or its representative, the Governor, seized every opportunity to strengthen its rights—for instance, the power of laying taxes in the colony, which has always been deemed an assertion of the right of self-government.

Notwithstanding the instructions to Governors for setting up various forms of government in the colony, no county was created before 1630. The unsettled state of the public mind on account of fears of assaults from the Indians, who hovered about outlying plantations, ready to fall upon the unprotected, and the gathering together of people into "great families," after the great Indian massacre, caused extensive powers to be granted to the commissioners of the plantations, and in those persons were combined military and civil jurisdiction. But in 1634 there were created eight shires which were to be governed as shires in England, with lieutenants, elected sheriffs, sergeants and bailiffs. They were James City, the country around Jamestown, Henrico, around the settlement of Sir Thomas Dale, Charles City, Elizabeth City, Warwick River, Warrosquayack, Charles River, and on the eastern shore, Accomac. That these counties, as a rule, took their names from and embraced the settlements is a curious phase in English institutions—for it was nothing more or less than the towns growing into the counties. This was very different from the origin of counties in England and in New England. In the former they represented the original divisions of petty kings or a collection of such small principalities under one strong hand; in the latter the county arose from a combination of townships for judicial purposes, it is supposed, since the origin of counties in that section has not been definitely

ascertained. This peculiar feature of the Virginia county history is easily explained. Planting having originally been along the rivers, as transportation and intercourse required, was confined to a small area. As Indian panics became less frequent, people ventured forth beyond stockades, and gradually went away from the towns in their pursuits of agriculture imposed upon them by inclination and the nature of the country. New planters came in and settled at once in comparatively remote regions, and population thus became too scattered to be ruled by a few military leaders. The complications arising from the new conditions, the importation of servants, the introduction of negro slavery and the settling of new lands, required a court and its proper minister to secure harmony. The wishes of the original settlers had great influence in the selection of sites for court-houses, so that in some of the older counties many of the inhabitants were often considerably inconvenienced by having to travel forty or fifty miles to attend court, and saw a better alternative in submission to injustice and injury. In the counties created afterward the attempt was made to place the court-house as near the center as possible, but as long as population remained in cismontane regions there was a natural desire to seek the river banks for sites. The main point to be remembered is that at first the counties were the outspreading of towns, not that the towns, as later, were the results of the people in the county seeking a place for the transaction of business necessary even in a planting community.[1]

In 1680 there were twenty counties, a word introduced into the laws in 1639, and the number increased as it became necessary. For Englishmen were not content to remain

[1] Spotswood Letters, Brock, p. 37. Since this sentence was published the writer has read the "Genesis of Counties," by William Green, LL. D., which appeared in the able memoir by one of Virginia's historians, Rev. Dr. Philip Slaughter, and he sees no reason why his theory should be changed.

always in piedmont regions, but crossing the mountains gave names to vast tracts of territory, out of which were afterward carved states. In the formation of new counties natural boundaries were adopted whenever it was possible to be done. When the county had finally become crystallized, it was divided into parishes, precincts for the constables, and walks for the surveyors of highways, the last two divisions being subject to such rules and alterations as the county court thought fit to make. Every county bore its share of the public levy, and was obliged to pay the charges of its convicted prisoners, to make and clear its roads, and to keep the rivers free from underbrush and other obstructions. The public roads were made by the inhabitants under the guidance of the surveyors of highways, and were extended to the county lines. The obligation to work on the roads finally devolved upon laboring tithables, who were summoned by the surveyors. Bridges were in the care of surveyors of highways, and when a bridge was built between two counties, the expense was shared by those counties. In the absence of bridges many ferries were established at convenient places along deep rivers.

Turning now from a consideration of the county in general to a study of the particular officers in the county, one is struck almost at first glance by the prominence of the lieutenant, anciently the commander, who besides being the chief of militia in his county, was a member of the Council, and as such, a judge of the highest tribunal in the colony. In early days he was charged with the duty of keeping sufficient powder and ammunition in each plantation, of seeing that people attend church regularly and refrained from work and traveling on Sunday; of levying men to battle with dusky foes who might be lurking about to steal hogs; of making annually a muster of men, women and children, and of reporting to the Governor the names of new comers. He was obliged also to see that there were no infringements of the tobacco laws, a most important duty in Virginia. With commissioners of the Governor he held monthly courts for the

settlement of suits not exceeding in value one hundred pounds of tobacco, and from this court appeal was to the Governor and Council. This court also heard petty causes and inflicted proper punishments. But as the head of the militia the lieutenant was most important. The military character imposed upon the colony in the beginning was for some years necessary, but the practice of arms seems to have been neglected for a time after Yeardley's return to Virginia. The record of the reorganization of the militia is found in the law made in 1624–25: "That at the beginning of July next the inhabitants of every corporation shall fall upon their adjoining salvages as we did the last yeare, those that shall be hurte upon service to be cured at the publique charge; in case any be lamed to be maintained by the country according to his person and quality."[1]

This order finds explanation in an account of the plantation written in 1624 by some of the surviving planters. It states that on March 22, 1621–22, the savages, who had been allowed many liberties in their intercourse with the whites, fell upon them without warning, and slew many. Falling upon the savages was retaliation and self-protection in their weakened condition. The laudable and Christian design of converting and educating the savages, as set forth in the writings of the first twenty years of the century, was changed to a plan of extermination, in which the planters were still actuated by Christian motives, if one relies upon their own statements: "Our gov^{r} Counsell and others have used their uttermost and Christian endeavors in prosequtinge revenge against the bloody salvadges, and have endeavored to restore the Collonye to her former prosperitye, wherein they have used great diligence and industrye, imployinge many forces abroade for the rooting them out of severall places that thereby we may come to live in better securitie, doubtinge not but in time we shall clean drive them from these partes, and

[1] Hening's Statutes, Vol. I., p. 123.

thereby have the free libertie and range for our cattle."[1] This was the same kind of spirit as that shown by most of the colonies in their relations with the red men. So long as it was convenient or politic, treaties were observed, but little was required to change the feeling of brotherly love to the conviction that the "dead Indian is the best Indian." The seemingly heartless but necessary decision, "the Indian must go," was made at that early date and by a community whose members in a century's time had learned to be proud of Indian ancestry. But fear of Indians kept the militia together, and in 1690 it consisted of 6,570 horse and foot; in 1703 of 10,556; in 1715 of 14,000; and in 1755 of 28,000. It was during the rule of Spotswood that the militia reached a high state of perfection, the effect of which was noticeable in the French and Indian war. The Governor was the commander-in-chief of the militia, and he appointed in each county a lieutenant, upon whom was conferred the honorary title of colonel, when he was a member of the Council. To this system of honorary titles has been traced by some the abundance of military titles in the South. The custom must have developed rapidly, for a writer in 1745 felt called upon to remark, "Wherever you travel in *Maryland* (as also in Virginia and Carolina) your ears are constantly astonished at the number of *Colonels, Majors* and *Captains* that you hear mentioned."[2]

The ancient planters—that is those who came into Virginia before or with Captain Gates—and their posterity were ex-

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[1] Col. Rec., p. 83. The following, from a letter concerning the massacre, was written to Virginia in 1622 by the Company. "As for the Actors thereof we cannot but with much griefe proceed to the condemnation of their bodies, the saving of whose souls we have so zealously affected, but since the innocent blood of so many Christians doth in justice crie out for revenge and yo^r future securitie in wisdom requires we must advise you to roote out from being any longer a people so cursed, &c." Neill: The London Company, p. 331.

[2] Itinerant Observations in America, London Magazine, 1745–46.

empted from military service, unless as officers; new settlers were not obliged to serve for one year after their arrival, and no person could be forced to exercise in arms outside of his parish or his county. In February, 1645, it was decreed that in certain counties every fifteen tithables should furnish and equip one man for service against Indians. This provision was afterward modified in a law that every forty persons should provide an able man and horse "with furniture, well and completely armed with a case of good pistolls, carbine or short gunn and a sword, together with two pounds of powder and tenn pounds of leaden bulletts or high swan shott, and alsoe that each respective forty tythables doe provide and send up to the severall storehouses five bushells of shelled Indian corn and two bushells of meale, eighty pounds of well salted porke, or one hundred pounds of good, well salted beefe for fower months' provision such man and his horse."[1] The bodies of troopers raised in this manner were called rangers, and from time to time patrolled districts likely to suffer from Indian invasion.

Governor Berkeley reported in 1671 that all freemen were bound to drill every month in their counties, but this rule was not always strictly followed. Governor Dinwiddie paid a great deal of attention to the proper training and regular exercise of his militia, and he divided the colony into four districts, each commanded by an adjutant to drill first the officers, then each company separately.[2] Certain persons were

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[1] Hening: Vol. I., 292; II., 435.

[2] On August 27th, 1763, Sir Jeffery Amherst wrote to Sir Wm. Johnson: "Colonel Stephen with a body of 4 or 500 men of the Virginia militia is advanced as far as Forts Cumberland and Bedford, with a view not only of covering the frontiers, but of acting offensively against the Savages. This publick spirited Colony has also sent a body of the like number of men, under the command of Colonel Lewis for the defence and protection of their South west frontiers. What a contrast this makes between the conduct of the Pennsylvanians and Virginians highly to the honor of the latter, but places the former in a most despicable light imaginable." Documents relating to the Col. Hist. of N. Y., Vol. VII., p. 546.

excused from militia duty; but if an overseer of slaves who had been excused should appear at muster without arms or not participating, he was liable to a fine. The celebrated William Byrd, while travelling with a surveying party to North Carolina in 1734, witnessed and recorded a parade as follows: "It happened that some Isle of Wight militia were exercising in the Adjoining pasture, and there were Females enough attending that Martial Appearance to form a more invincible corps."[1] General musters were held annually and company drills monthly, or once in three months. At intervals of ten or twelve years acts were passed to increase the efficiency of the militia on account either of Indian troubles or pressure from abroad. But there were frequent complaints of the neglect of muster duties, the difficulties in the way of summoning the militia and the partial futility of the laws. The whole system may be summed up as follows: Officers similar to those in England, a colonel, lieutenant-colonel, major, captain, were commissioned by the Governor or commander in the county, the cornets for cavalry, ensigns for infantry, sergeants, corporals and other minor officers being appointed by the colonel or the captain. Indians and negroes were allowed to act as drummers, trumpeters, pioneers on a march, "hewers of wood and drawers of water." The number of men in a company ranged from fifty to seventy-five, and there were from seven to ten companies in a county. An examination of militia accounts gives a fair idea of the state of the colonial militia. Payments were claimed for horses, cattle and articles impressed for provisions and ammunition supplied. It was the custom to draft soldiers in the eastern counties and to conduct them under guard to Fredericksburg or Winchester. The guards were paid, as was also the sheriff "for maintaining drafted soldiers in Goal."[2]

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[1] Capt. Byrd's Narrative of the Dividing Line, Vol. I., p. 70.

[2] In 1758 a bill was presented by Abraham Maury for "28 days service in riding to forts and settling townships." In Virginia before the Revolu-

Connected with the militia was an interesting institution which began to take form in 1726. The number of slaves had by that time become very great and occasionally there arose from this source slight troubles causing anxiety to owners and rulers. As early as 1710 a negro slave was freed by the Assembly for having discovered to the authorities a conspiracy among negroes of Surrey county looking to insurrection. Even at that early date were brewing troubles that afterward did occur, as Gabriel's War in 1800 and Nat Turner's Rebellion in 1831.[1] To prevent insurrections, unauthorized meetings, wandering from one plantation to another without passes, measures had to be taken by the government. The chief of militia in each county was ordered to appoint an officer and four men, called patrollers, to visit at any time negro quarters or places suspected of harboring unlawful assemblies. These "paterollers," as the negroes learned to call them, could arrest offenders and send them to the nearest justice, who, if the offenders deserved it, could have them whipped.

At the outbreak of the revolution, the militia was re-organized and nomination of officers was placed in the hands of the

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tion there were no townships in the New England sense, but the use of the word by Maury is explained in a letter written in the same year by him to Colonel Theoderick Bland, Sr., as follows: "I took a tour to the forts . . . those who had land of their own freely embraced so fair an opportunity to defend their possessions and readily agree to associate and collect themselves together in small townships, but when I went to fix upon the most covenient places to erect the said townships every person insisted that his own place was most convenient . . . and I accordingly made choice of Mayo's Fort, Hickey's Black Water, and Snow Creek as the most proper places for the said township(s) . . . I have since my return heard that Blair township at Snow Creek is in great forwardness, but that the others are not yet begun, the people being yet too busy about tending corn . . . I demanded . . . 80 men to garrison the said townships." Bland Papers, Vol. I., p. 11.

[1] An account of Nat Turner's rebellion is in the "Atlantic Monthly," Vol. VIII., pp. 173–187, and of Gabriel's war in the same publication, Vol. X., pp. 337–345.

committees in counties, and their appointment came from the Committee of Safety. From the militia and volunteer troops were raised minute men, and the militia was drafted into the Continental Army. The subject of the militia has been treated first, because it naturally preceded local courts, as protection against outside foes was at first more necessary than protection against each other, and as long as men were fearful of attacks from without, internal disputes had to be laid aside for the general welfare.

But monthly courts were established, but as they were changed in 1643 to county courts, and the commissioners changed to commissioners of county courts, it is best to study them under the latter title. The number of commissioners, who were afterward called justices and in 1770 magistrates, was for some years undetermined; in 1661, in view of the contempt in which the place was held, and on account of disorders arising from the large number, the court was reduced to eight men in each county, who should in succession exercise the sheriffalty. This law was not successfully carried out and fell into disuse, for there were often as many as fifteen justices in a single county. As a rule the courts nominated their successors, who were appointed by the Governor. Not always, however, did he follow their suggestion, though neglect to do so was met by such vigorous protests as: "But y^{t} now we despair of M^{r} Stapleton being a member of our Court, a person most notorious by abusive, profane and Imoral Qualities so misbecoming the seat of Justice y^{t} we humbly desire to be excused sitting wth him, beleiving him designedly represented to make both us and ye County in generall uneasie.

"The rest of y^{e} Gent^{e} we should have comply'd with, and would not have presum'd to have given yr Excy. this trouble at this time had we not Just reason." "W^{m} Johnston, Gent. being asked whether he would accept & Swear to the Commission of the Peace; now Produced, Answered, That he would not accept and Swear to sd: Commission because Anthony Struther, William Hunter and William Lyne are put in the

Commission without a Recommendation from the Court." Six other members of the same court refused to serve for similar reasons, one of them expressing the belief that Lyne had begged for the commission.[1] These extracts show the sentiments of justices about their associates, and insomuch as there was no compensation for serving, right seems to have been on the side of those justices, who set up a high standard of admission to their membership. The courts were commissioned at their own request or at the Governor's pleasure. An account of Virginia, written about 1698, by one evidently hostile to the Governor, states that "he renews that commission commonly every year, for that brings new fees, and likewise gives him an opportunity to admit into it new favorites, and exclude others that have not been so zealous in his service."[2] Four of this court constituted the quorum and met at the court-house monthly, or if necessary more frequently.[3] Court-day was a holiday for all the country side—especially in the fall and spring. From all directions came in the people on horseback, in wagons and afoot. On the court-house green assembled in indiscriminate confusion people of all classes—the hunter from the backwoods, the owner of a few acres, the grand proprietor, and the grinning, heedless

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[1] Palmer: Calendar Virginia State Papers, Vol. I., pp. 88, 237.

[2] Mass. Hist. Coll., Series I., Vol V., p. 150.

[3] One of these four had to be of the "quorum." This word does not seem to have had any special signification in Virginia towards the end of the eighteenth century, but when monthly courts were created it was ordained that the commander should be of the "quorum," and in the appointments for the earlier courts, certain persons were designated as of the quorum. Blackstone wrote, in regard to justices of the peace, "In which number some particular justices or one of them are directed to be always included, and no business is to be done without their presence, the words of the commission running thus, "*quorum aliquem vestrum* A. B. C. D., &c., unum esse volumus," whence the persons so named are usually called justices of the *quorum*. And formerly it was customary to appoint only a select number of justices eminent for their skill and discretion to be of the *quorum*, but now the practice is to advance almost all of them to that dignity, etc." Cooley's Blackstone, Vol. I., pp. 349–351.

negro. Old debts were settled and new ones made; there were auctions, transfers of property, and if election times were near, stump speaking. Virginia had no town meeting as New England, but had its familiar court-day.

When they had been commissioned, the justices took the oaths of allegiance, of office, &c. In 1634 it was directed that one member of the Council should assist at the monthly courts; this rule was changed in 1662, when the Governor undertook for himself and the Council to visit all the county courts, that he might be able to give the King an exact account of the government. It was enacted, therefore, that he and one of the Council, or two of the Council commissioned by him for every river, should "sitt judge in all the county courts, and there hear and determine all causes then depending in them by action or reference from any other preceding court in that county. Provided noe councellors be appointed to goe the circuite in the river wherein he doth inhabit." But in a few months the institution was abolished on account of expense. Though short-lived, it is interesting as a phase of the system of itinerant justices whose existence has been traced back to Alfred's time, through the eyres, the provincial circuits of the officers of the Exchequer, and the visitations of Edgar and Canute. The system arose and was continued for centuries in England for purposes of taxation, but the judicial features were added from time to time and tended to absorb the financial.

County courts could hear no cases for debts involving less than 20 shillings, and to prevent the expense of traveling to Jamestown they had final jurisdiction of causes under £16 sterling. But needs of the colony increased the powers and duties of the county courts, and at the Revolution they settled all cases at common law or chancery, except when loss of life or limb or legal protection was involved. They were also courts of administration and had the care of orphans. Appeal was from them to the general court. The general court was originally the quarter court held by

the Governor and Council in March, June, September and November. The June term was abolished in 1659, and on account of the absurdity of calling a court meeting three times only in the year a quarter court, the name general court was adopted in 1662. But November was too late in the year to allow planters to attend court with any degree of comfort, and September was too early, inasmuch as trading vessels did not arrive until later, and the tobacco trade was dull; hence, after 1684 the terms were held in April and October.

To return to the county court, probably one of its most important functions was the laying of the county levy, for Virginians paid three kinds of taxes—parish, county and public. For the laying of county taxes the court met and ascertained the county expenses for roads, bridges, buildings, burgesses' salaries, etc. To determine each man's proportion, the whole sum was divided by the number of tithables, for after a brief experiment during the years 1645–48 of taxes directly upon property, the authorities reverted to the poll system.[1] The court established rates of ordinances or inns, recommended attorneys to the Governor, and paid fees for the destruction of wild beasts. Jones wrote in 1724: "The wolves of late are much destroyed by Virtue of a Law which allows good Rewards for their Heads, with the Ears on, to prevent Imposition and cheating the Public, for the Ears are crop'd when a Head is produced."[2] The court had the yearly appointment of surveyors of highways, for whom it divided the county into precincts, that all county and church roads "might be kept clear, respect being had to the course used in England.[3] But water-ways were used in preference to land

[1] The following is a list of tax rates in 1645, taken from Hening's Statutes: 1 cow 3 years old, 4 lbs. tobacco, horses, mares, and geldings, at 32 lbs. a piece, a breeding sheep 4 lbs., a breeding goat 2 lbs., a tithable person 20 lbs.

[2] Hugh Jones: Present State of Va., p. 51.

[3] It is interesting to note the expenses of a survey. In the bill for the Fairfax survey of 1736, among the items of expenditures embracing feed

routes, and the road system of Virginia was for a long time imperfect. The surveyor-general of the colony was appointed by the president of William and Mary College. The land surveyors were in general examined and recommended by the same person or by the surveyor-general, and having been approved of by the Governor and Council took the oath of office before the court of the county where they were to serve. Although at one time there was a statute allowing county courts, with the consent of a majority of the inhabitants, to divide counties into parishes, it was the custom for parishes to be created by act of Assembly. The court made its own by-laws, and with representatives from the parishes could make by-laws for the county; it nominated inspectors of tobacco, granted divorces, regulated the relations of whites to the Indians, tried cases of piracy, erected ducking stools, pillories, whipping-posts and stocks, appointed collectors of county levies, and regulated the relations of master to servant. For instance, in August, 1751, the sheriff of Augusta County "having informed the court that Henry Witherington, a servant boy belonging to John Stevenson, was in jail and that he had an iron lock in his mouth, it was ordered by the court that he immediately take off the same.[1]

When an Assembly had been called, and the county had elected its two burgesses, the court sat as a court of claims, to take proof of debts and complaints which were to be presented to the Assembly by the burgesses, "and to know the pressures, humours, common talk, and designs of the people of that country, perhaps there is no better way than to peruse the journals of the house of burgesses, and of the committee of grievances and propositions."[2] When circumstances arose

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and shelter for horses, lodging, meals, etc., amounting in all to £37, are found claret, madeira wine, beer punch for gentlemen, tea for gentlemen, and liquors for surveyors, costing over £11.

[1] Virginia Historical Register, Vol. III., p. 76.

[2] Mass. Historical Coll., Series I., Vol. V., p. 149.

for which laws were not expressly provided, the court was empowered to attend to them. Thus in Lancaster county, in the lack of a vestry, the court with the minister of a parish appointed church-wardens and sidesmen or assistants. The jurisdiction of this court over slaves was varying. The court of Isle of Wight County had a slave, in 1709, receive forty lashes upon his bare back for being accessory to a negro insurrection; and a free negro, who had entertained some of the runaway negroes at his house, received twenty-nine lashes "well laid on." Information of offenses was laid before the court by the grand jury, consisting of impaneled freeholders possessed of at least fifty pounds in real or personal estate, or by church-wardens. An idea of the state of justice in the eighteenth century may be derived from the records of grand jury presentments: "We present Thomas Sims, for travelling on the road on the Sabbath day with a loaded beast;" "William Montague and Garrett Minor for bringing oysters ashore on the Sabbath," etc. Persons were also presented for cursing, swearing, bastardy, and one for "drinking a health to King James and refusing to drink a health to King George.[1] If the accused desired, he was tried by a petit jury consisting of from six to twelve persons, for the practice of the general court was followed by the lesser. In 1672 the sheriff of Henrico county was ordered to impanel six men to try a woman for stabbing to death her fellow servant; six men were summoned to try a traitor and a cattle thief. In certain cases the old English custom of the appointment of a jury of matrons prevailed. Very early in the colony's life, the jury consisted of ten and of fourteen men, notwithstanding the clause in the charter providing for a jury of twelve. But that there was an attempt at least to copy after English practice, may be inferred from the following enactment: "And the jurors to be kept from food and releise till they have

[1] Meade: Old Churches and Families of Virginia, Vol. I., pp. 230, 254, 365; Va. Hist. Reg., Vol. III., p. 77.

agreed upon their verdict according to the custom practised in England." The county courts had great regard for their dignity, as has been shown where the court refused to sit with an unworthy member; and to prevent misconduct in justice it was enacted "that whatsoever justice of the peace shall become soe notoriously scandalous upon court dayes at the court-house, to be soe farre overtaken in drinke that by reason thereof he shalbe adjudged by the justices holding court to be incapable of that high office and place of trust, proper to inherett in a justice of the peace, shall for his first such offence be fined five hundred pounds of tobacco and cask and for his second such offence one thousand pounds of tobacco." If he was again guilty, a heavier fine was to be imposed and he should lose his position. One court passed a by-law that an attorney who interrupted another at the bar should be fined five shillings. At one session of this court the justices were in a quandary about the treatment of an old lawyer, who had long practiced in the county, and who had been urged over the precipice of profanity by the sarcastic witticisms of a younger man. After considerable consultation they decided "that if Mister Holmes did not quit worrying Mister Jones and making him curse and swear so, he should be sent to jail."[1] This court had some time before committed a man to the stocks for two hours and fined him twenty shillings "for damning the court and swearing four oaths in their presence."

Very petty cases were heard by one or by two justices, from whom appeal was to the county court, in which case the justices who had had original jurisdiction were not allowed to participate in the trial. In the absence of a coronor a justice could act in his stead.

The executive officer of the court was the sheriff, who was not so much the representative of the Governor in the county court as he was the representative of the county to the Governor. He was appointed as follows: the justices nominated

[1] Va. Hist. Reg., Vol. III., p. 17.

three persons, generally from their own body, one of whom was, as a rule, commissioned by the Governor, though the practice varied. The sheriff or his deputy had to serve writs, superintended elections of burgesses, collected public and county levies and sometimes parish tithes, impressed men for service on shipboard, sold estates of suicides at public outcry, made arrests, sometimes resorting to the old "hue and cry" in pursuit of runaway servants or slaves, collected fines and carried the public levy to the capital. Sheriffs, as well as other officers of the law, adopted the practice of attending parish churches for the purpose of serving writs, warrants, etc. This was no doubt easy and agreeable for the sheriffs, but the worshipping delinquent could not have relished such an interruption to his devotions. Persons liable to such visitations neglected their church duties, so that a law had to be passed forbidding sheriffs to make arrests on Sundays or muster-days. This law did not prohibit, however, the pursuit on Sunday of an escaped felon. By special warrant from the Governor, a councillor, or two justices, a sheriff could make arrests on shipboard. When peace was concluded between Queen Anne and the King of France, in 1713, Governor Spotswood ordered a proclamation to be "openly read and published at the principal Church of each parish immediately before divine service by the Sheriffs of the respective Countys, their officers, or substitutes on horseback." The sheriffs had also to see that copies of the special collect for the occasion should be distributed in time. The sheriffs or their deputies executed the orders of the courts, and in some cases they were sore let and hindered in running the race set before them. Peyton gives examples of writs returned with indorsements such as—"Not executed by reason there is no road to the place where he lives;" "not executed by reason of excess of weather;" "by reason of an axe;" and "of a gun;" "because the defendant's horse was faster than mine;" "because the defendant got into deep water—out of my reach."[1] Such

[1] Peyton: Hist. of Augusta Co., p. 58.

were the duties and cares of the sheriff, who in the exercise of his various functions, from executing an order of the Governor to ducking a witch, was but the old shire-reeve of England, with powers changed to suit a new order of things.[1] The other officers of the county were the coroner, who was commissioned by the Governor to view corpses, and, if necessary to act as sheriff, and the constables, who were the assistants of the sheriffs in giving notice of court meetings and of levies, in looking after runaway slaves, in transferring paupers from parish to parish and in pursuing criminals.

The county system of ante-Revolutionary Virginia has been studied thus minutely in view of the fact that it served as a model for, if it did not directly influence, similar institutions in the South, South-west, and even in some States of the West.

In this system the dominant idea was gradation of power from the Governor *downward*, not upward from the people. The necessary tendency to strong centralization was counteracted, however, by the individuality of officers, high and low. But the system offered many loop-holes for corruption, and possessed real evils. The justices, serving at the Governor's pleasure, might be wrongly influenced by him; the sheriff, his appointee, might use corrupt means to return, as elected to the Assembly, burgesses who could be used as tools by the Governor. Few, comparatively, were allowed, by reason of property qualification, to effectively raise their voice against corruption. In view of these chances it is somewhat remarkable to find how few instances of malfeasance in office are recorded. Many changes have been introduced in the county system since the Revolution; but, as long as Virginia remains a largely agricultural State, so long will her local political life be moulded upon the plan, which has prevailed for two centuries.

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[1] For an account of the ducking of Grace Sherwood, the so-called Virginia witch, see MAGAZINE OF AMERICAN HISTORY, November, 1883, p. 425.

VI.

THE TOWN.

The circumstances, which caused the county system to prevail in Virginia and aided its growth, prevented any extensive development of town life and, consequently, the institution of town government. The first settlers were obliged to content themselves with the slight fortifications, made of boughs and trees arranged in the form of a half moon, about Jamestown, which was a town only in its being a collection of rude dwellings fashioned after Indian patterns but a sufficient protection against wind and weather. With time appearances changed, for Jamestown was in 1614 enclosed by a palisade, and consisted of two rows of frame dwellings, two stories and an attic high, three storehouses and a church. A few houses also were outside of the town proper, as were two block houses, which were used for posts of observation of the movements of Indians in the vicinity. At that time there were several other embryonic towns along the Powhatan, the most important of which were Henrico and New Bermudas. Henrico had been built in 1611, under the direction of Sir Thomas Dale, and its extent was several acres. It was on a peninsula formed by a bend in the river, and was further protected by a palisade, at each corner of which was a watch tower. There were three streets in the town, with a church, storehouses, etc. Two miles inland was another palisade extending across the land, along which were built watch towers, and on the opposite side of the river a region nearly twelve miles in extent was impaled, so that

corn and pasture lands, habitations and parsonage, and a "guest house" for invalids were all inclosed and protected by an arrangement of fortifications. New Bermudas, or Bermuda town, was built about 1612, and Ralph Hamor considered "this Towne or plantation a businesse of greatest hope ever, begunne in our Territories there."[1] Hamor mentioned a patent for the government and organization of this town, but as the document has not been preserved, the interesting subject of the relations of the different hundreds to the town must remain unstudied.

But the government both of Jamestown and of the other settlements, which had but a feeble existence, was the government of the colony. In the martial code, to be sure, were set forth in great detail the rules for the guidance of the captain of the watch and of the guards in the towns, and if one relied upon this code alone as authoritative, beautiful analogies might be drawn of the government of towns in Virginia, and that of towns in England and elsewhere. But the details cannot be said to have been carried out, and in the absence of corroborative statements one must be satisfied with a brief outline of the proposed administration. Strict watch and ward were to be observed, due attendance upon church services was enjoined, and there were laid down such sanitary legislation as involved the prohibition of washing clothes in the streets or near wells and pumps, the obligation of every one to keep his house clean, as well as the space before the door, and the necessity of placing the beds at a certain height from the floor. An idea of the power of the authorities to interfere with individuals may be seen in the order to the officer of the watch: "Further he shall command all disordred people vntimely (sitting up late in vnusuall assemblies, whether in priuate meeting, publicke tap houses or such like places) vnto their rests, for which he shall cause all fire and candles to be put out and raked up in the towne, and such

[1] Hamor's Narrative, &c., pp. 18–34.

night walkers or vnruly persons whome he shall meete in the streets he shall either send to their lodgings or to the Prouost Marshall according as their misdemeanour shall require."[1] Those primitive towns, therefore, built to meet the wants of the times and with materials most convenient, were governed by military authorities.

With broad stretches of pasture and woodland offering an easy conquest, the settlers were ill-content to remain cooped up behind wooden fences, but longed for private possessions and unrestricted power to labor. Towns had begun to decay and town life was stagnant as early as 1619, and from that time until 1680 probably the lowest and broadest foundations were laid for the prevalence of country life and customs. From 1650 until 1730 may be called the period of legislation for towns, from 1730 to the Revolution and the after years, the period of the slow growth of towns. About thirty years of Virginia's history demonstrated that in spite of river-ways there was delay both in obtaining goods from England and in shipping the native products. To relieve the people from these inconveniencies and the possible evils of forestalling, the Assembly in 1655 passed an Act, which provided for setting apart in every county of not more than two places one mile and a half in extent, where alone trade could be carried on until eight months had passed. The commissioners of the county were bidden to appoint market day, to keep courts, county offices and prison, and to endeavor to have churches and inns established within the area assigned for the market. This Act was due in a great measure to the efforts of Edward Diggs, who was Governor in 1655-56. But the proviso that trade should be carried on in the market alone was calculated to render the Act void, and it was repealed in 1656, though it was provided that "if any countrey or particular persons shall settle any such place whither the merchants shall willingly come for the sale or bringing of goods, such

[1] Force's Tracts, Vol. III., "Lawes, &c." p. 39.

men shall be lookt upon as benefactors to the publique."[1] This may be considered the first attempt in Virginia to bring about by legislation an institution, which was opposed by nature and the habits of many inhabitants.

But some people wanted towns, and did all they could to favor their establishment. In 1662 appeared a pamphlet entitled "Virginia's Cure," in which the author bemoaned the loose habits of the planters, who by their mode of settling at some distance from each other, were debarred from attending weekly religious services, the want of a proper education for the rising generation, and many other ills which threatened to come upon the people. He advocated, as the remedy for such political and social diseases, the building and inhabiting of towns. The Virginians being indisposed to adopt such a plan, this advisory narrative, which was addressed to the Bishop of London, goes on to suggest that laborers be sent from England to build the towns, and that the planters should occupy houses in the towns, and visit on horseback their plantations whenever it might please them to do so. This proposition was never carried into effect, as might have been expected, and for several years no more efforts were made to erect towns. In 1679 another reason was given why towns should be built—namely, that the existing manner of living rendered the people particularly liable to the devastations of Indians. Conditional grants were, therefore, made to Major Laurence Smith and Captain William Bird, who were expected to defend the borders from the Indians, and whose settlements would be towns with local governments. The law with slight changes was afterwards made more general.

William Fitzhugh, who was a planter and lawyer of Stafford county, wrote very confidently in July, 1680, "we are also going to make towns. If you can meet with any tradesman that will come in and live at the Towns, they may have large privileges and communitys."[2] He referred to the act

[1] Hening: Statutes, &c., Vol. I., p. 397.
[2] Va. Hist. Reg., Vol. I., p. 166.

which was passed in the month of June of that year, in order to counteract those circumstances, which the Assembly thought were diminishing the value of tobacco. The principal provisions of this act were as follows: that each county should buy fifty acres of land for ten thousand pounds of tobacco and cask, which price the owner of the land was compelled to accept, that the land so obtained should be vested in trustees appointed by the county court, that all goods, &c., for exportation, should be brought to the towns, and all chattels, servants, &c., which should be imported were to be landed at the towns. All tradesmen and mechanics, who should take up their permanent abode in the towns, were to be free from arrest or from seizure of their estates for debts incurred before they came to the towns. This Act was suspended by the King in Council at Whitehall in 1681, as the lords commissioners of customs represented to him that it was impracticable, and would injure the receipts from customs. The Council of Virginia reported to Governor Culpeper in 1683, that this Act had obstructed the merchants, who taking their goods to the places designated by the Act and finding no place to store them, had refused to obey its injunctions. An Act of 1691 was similar to that of 1680, but, as it was suspended in 1693, it is of interest only in recording the fact that at some of the places named in the Act of 1680, little mushroom settlements had sprung up. The lands, however, which had been vested in trustees, were in 1699 confirmed to those trustees, and leave was granted for them to be used as ports.

Nearly half a century had been passed in unsuccessful attempts to introduce town-life into the colony, and the laws were of little more value than the paper upon which they were recorded. The causes of this failure were various, and in many cases were involved in the tobacco question. Class interest or a self-seeking policy prevented the fulfillment of the law for towns, as they had done in the case of markets. The majority of the burgesses being planters, each man naturally wished to have the conveniences of a town near

him, and consequently one and even two paper towns were erected in every county. Another disadvantage in the laws that were passed, was the obligation of persons to sell and buy in a certain place only, and this of course aroused the enmity of merchants, who had obtained good custom in places they had occupied for some time, and who would have lost it, if they had been obliged to move to another part of the country. In the absence of towns, trade was warped for those merchants, who had to sell on credit, and who were compelled in following their vocations to journey over many miles, collecting debts or doing some little retail business. But though the people might at times have desired towns, the continued frustration of the laws rendered them more and more opposed to the change from country life; and as a Virginian argued and was quoted by a writer in 1689, "they might observe already, wherever they were thick seated, they could hardly raise any stocks, or live by one another; much more would it be impossible for us to live when a matter of an hundred families are cooped up within the compass of a half a mile of ground."[1] But the welfare of Virginians was barely nothing in comparison with the vast interests accruing to Englishmen from the culture of tobacco—and tobacco was king.

One great impediment to the development of town life was the weakness of the mercantile class.[2] Owing to the manner of planting the colony and the laws governing trade, there was no strong body of men, who, ensconced behind high walls of their town or towns, could compel by force of arms

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[1] Mass. Hist. Coll., 1st Series, Vol. V., p. 131.

[2] De Vries, in narrating the account of his voyages to America, spoke as follows of the merchants of Virginia in 1639. "The English there are very hospitable but they are not proper persons to trade with. You must look out when you trade with them, Peter is always by Paul, ... For if they can deceive any one they account it among themselves a Roman action. They say, in their language, 'He played him an English trick,' and then they have themselves esteemed." New York Hist. Coll., 2nd Series, Vol. III., p. 127.

or through the ever potent influence of money the central government to grant them privileges and immunities, which would have given them a semblance of local power. There was no "tumor plebis, timor regis, tepor sacerdotii," as town organization was characterized by a writer in the reign of Richard I, to wrest from the Assembly the right of laying local taxes, and the consequent right of electing local magistrates and police. In Jamestown alone of the settlements, the inhabitants were allowed to make by-laws, but this privilege was granted them in 1676, during Bacon's regime, and probably was never exercised, as Jamestown was soon afterwards almost entirely destroyed by fire. With the eighteenth century, however, began a new method of town organization. Early in the year 1705 the English merchants who were interested in Virginia trade inaugurated a movement looking to the establishment of ports at suitable places on the larger rivers of Virginia. The matter having been brought to the notice of Queen Anne, she referred it to the commissioners of trade and plantations. They recommended to her that such places should be established in order that the royal revenues might be regularly collected, but they also suggested that the wishes of planters and merchants should be taken into consideration, and, therefore, that the number of ports should not be greater than three on each of the large rivers and two in Accomac.

The Queen, therefore, issued instructions to the Virginia authorities to bring about the passage of such an Act, as would meet the necessities of the merchants, and satisfy the planters, which Governor Nott accordingly recommended to the Assembly of October, 1705. The Act for Ports was passed, but the Assembly went several steps further than the establishment of mere wharves or docks.[1] Using the argument that houses would be erected at these ports, the burgesses enacted that at every port a town should be established,

[1] Hening: Statutes, &c., Vol. III., pp. 404–418.

where alone within an area of five miles, trade should be carried on, and where alone ordinaries could be established, except at a ferry or court-house ten miles distant. Those who should take up their abode in these towns were to pay but one-fourth of the regular amount of duty upon trade, and were to be free from all tobacco levies for fifteen years after the Act went into execution, except the levies on slaves and the church rates, where a church was or should be built in the town. Another inducement offered was that inhabitants of these towns should not be obliged to do militia duty outside the town limits, except in case of war, and then they could not be made to go further than fifty miles. Provision was thus made for buildings and inhabitants, and some acute mind, that had no doubt discovered the flaw in preceding Acts, suggested that "such a number of people as may be hoped will in process of time become inhabitants of these ports and towns cannot expect to be supported without such regulations are made and methods put in practice as are used in the towns of other countrys." A most extraordinary and radical departure from former policy was therefore taken. Each town was to be a free borough with markets and an annual fair. For their government, whenever the number of inhabitants should have become thirty families, they were, upon summons from the Governor, to elect eight benchers of the guild hall, who should annually elect one of their number director. Vacancies in the number of benchers were to be filled by an election by the voters. The director, with three or more of the benchers were to constitute a court for hearing cases not exceeding in value £30, arising from trade in the town or on the road to it, and also criminal cases, though appeal could be made to the general court at the capital; cases involving more than £30 were to be tried by the county court. Small offences, such as immorality, sabbath-breaking, drunkenness, etc., were to be tried by a weekly court called the hustings, and consisting of the director and benchers. When there were sixty families in the town the voters were

to elect for a term, continuing during good behavior, fifteen brethren assistants to the guild hall, who should constitute the common council, which was to guide the director and the benchers in making a levy upon the inhabitants, and which with the director and benchers was to make the laws for the town. Whenever a town should become thus thoroughly organized, the inhabitants could elect a burgess to the Assembly. It must have been fully expected that this Act would be put into execution, for not only were the places for towns designated and the names given, but even the days for holding markets in each town were mentioned. The law was not to go into effect for three years, and probably never did, as will be seen hereafter, but it is interesting, both because many of its features were brought out in later laws, and because it appears to have been an endeavor to reproduce in Virginia some of the features of one of the oldest local institutions of England, which at that time, according to one writer,[1] "was merely the shadowy phantom of an institution long dead—a hazy, indefinite term—the significance of which was unknown to the few municipal magistrates in whose mouths it was still current." The merchant guild or "gilda mercatoria," for such it was, originated before the Norman Conquest, and seems to have been an organization for the control and direction of commerce. In some cases it obtained the right of governing the town, in others it was merged into the corporation and gradually was lost to view as a distinct body. It would be interesting to those engaged in a study of English municipalities to investigate the origin of this outcropping of the institution in America.

But the English enemies of Virginia towns made a vigorous protest against the Act, and urged in 1709 the following shortsighted but, as they no doubt fully persuaded themselves,

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[1] Dr. Charles Gross in Johns Hopkins University Circular, March, 1884, p. 60. See also Dr. Gross' thesis on *Gilda Mercatoria*, Ein Beitrag zur Geschichte der englischen Städteverfassung, Goettingen, 1883.

patriotic objections, viz., that "the whole Act is designed to Encourage by great Priviledges the settling in Townships, and such settlements will encourage their going on with the woolen and other manufactures there, And should this Act be Confirmed, the Establishing of Towns and Incorporating of Planters as intended thereby, will put them upon further Improvements of the said manufactures, And take them off from the Planting of Tobacco, which would be of Very Ill consequence, not only in respect to the Exports of our Woolen and other Goods, and Consequently to the Dependence that Colony ought to have on this Kingdom, but likewise in respect to the Importation of Tobacco hither for the home and Foreign Consumption, Besides a further Prejudice to our shipping and navigation."[1] Such arguments prove that influential persons in England still looked upon Virginia as existing for the purpose of filling the royal coffers and the pockets of home manufacturers, and this idea, which was strongly prevalent a century before, was backed by the argument of the necessity of having the colony dependent. This was the expression of the same feelings which prompted in later years the writs of assistance and the Stamp Act, but it did not meet with similar hostility. For within a few weeks after his arrival in the colony Governor Spotswood, under instructions from Queen Anne, issued his proclamation which repealed the Act, and another struggle for corporate life was over.

But the repeal of the Act did not at first discourage manufactures. So many slaves had been employed, and so much time and territory had been given to the culture of the staple, in order to meet the many demands for it, that its price was very greatly reduced. People being unable to exchange their tobacco for clothes were obliged to make their own garments and to raise the necessary cotton and flax, and in one county, during the year 1710, at least forty thousand

[1] Palmer: Calendar (Va.) State Papers, Vol. I., p. 138.

yards of woolen, cotton and linen cloth were manufactured. But before the Revolution the manufactures with the exception probably of the working of iron did not advance beyond the primary stages, that is, domestic handicraft, and thus one of the main incentives to the gathering together into towns was lacking. Thomas Jefferson who was so energetic in his efforts to set up local forms of government, strongly advised Virginians to remain an agricultural people and to let outsiders do the manufacturing for them. "Let our workshops remain in Europe," he wrote, for "the mobs of great cities add just so much to the support of pure government, as sores do to the strength of the human body."[1] With the exception of the Act of 1705, the policy in regard to town building was to build single towns at the proper time and in suitable places. As Jamestown had been destroyed in 1676, and the site had been found to be unhealthy, the seat of government of the colony was removed to a place called Middle Plantation, between the James and York rivers, where, in accordance with an Act passed in 1699 and repeated in 1705, Williamsburg was built. A description of the town and the manner of its being laid out will serve in the main as a description of the plans of most Virginia towns.

It was originally intended to lay out the town so as to form a monogram of W and M, in honor of the King and Queen, but this was found to be impracticable. There was a broad street running east and west and three-quarters of a mile long, at the west end of which was the College of William and Mary, and at the east end the capitol. This was Duke of Gloucester street, and parallel to it on either side were Nicholson and Francis streets, which were crossed by Botetourt, Palace, King, Queen, Nassau and other streets. The church was at the corner of Palace and Gloucester streets, and near it were the court-house and powder magazine. Spaces were left for a market place, court-house green and parking for the

[1] Notes on Virginia, p. 225.

palace, and the remainder of the town was divided into square plots, each of which was large enough for a house and garden, and the houses which were of brick or frame, were built at such a distance that a fire could not easily spread. On Queen's creek, a tributary of the York river, and on Archer's Hope creek, a tributary of the James, both of which creeks were not more than a mile from the town, were also dwellings and warehouses. Such was and is even at the present time the general plan of Virginia towns, though there were divergences arising from various causes.

There were but three forms of towns before the Revolution, the mere collection of houses, or village, the town for which trustees were appointed by the Assembly to attend to the surveying, letting and selling of the townland, both of which were under the jurisdiction of the county court, and the chartered town or borough. There were no cities in point either of population or of government. The towns with trustees were under the immediate charge of the Assembly. One curious feature of these towns was that in one after another wooden chimneys were built to the houses, and a special Act of Assembly was necessary to cause their removal. It was some years before burgesses were wise enough to insert in the Act, which established a town, the proviso against building wooden chimneys. Another cause of complaint in new towns was the large number of hogs and goats which were allowed to roam at will within the town limits. The Assembly would be notified of this nuisance, and an Act relating to the stock of that particular town would be passed. Thus, in 1734, inhabitants of the town of York were forbidden to allow their swine or goats to go at large, and it was made lawful for anyone to kill the animals found thus, and the flesh was to be for the use of the poor. This town of York came with complaints to the Assembly more than once. In 1736 an Act was passed to prevent the sale within that town of "rum, brandy, or other distilled spirits, or any strong liquors whatsoever, or any mixture of the said spirits or

liquor, in quantities of less than two gallons." This was done to correct the prevailing practice of adulterating liquors with water and selling the mixture, without a license, to slaves, servants, and the lower classes. But to some of the unincorporated towns were granted the privileges of holding fairs twice a year, and of having markets upon certain days in the weeks, and in which cases the old English laws against engrossing, forestalling, &c., were declared to be in effect.

With the exception of the capital, Williamsburg, which was created a borough and a market town in 1722, Norfolk was the only borough in the colony. The study of the incorporated towns will, therefore, be confined to the consideration of the municipal history of Norfolk, with some few comparisons drawn from the civic life at Williamsburg. The land upon which Norfolk was built was acquired and surveyed in accordance with the Act of 1680 for cohabitation, and its advantageous situation in a few years attracted a large number of people who engaged principally in commercial pursuits. Captain William Byrd, on his way to North Carolina, passed through the town, which he described as "not a Town of Ordinarys and Publick Houses, like most others in the Country, but the Inhabitants consist of Merchants, Ship Carpenters and other useful Artisans, with sailors enough to manage their navigation." At that time Norfolk offered a market for products of the lower portion of Virginia and the neighboring country of North Carolina. Its merchants carried on a steady trade with the West Indies, exchanging lumber, meats, flour, &c., for sugar, fruits, molasses and rum.[1] The number of the inhabitants had so increased by the year 1736, that in reply to their petition, the Governor, for the King, granted to them a charter which was afterwards confirmed by the Assembly, and by which the town was made an incorporated borough. The governing power of the borough was vested in a mayor, recorder, and eight aldermen, who

[1] Byrd: The Dividing Line, &c., Vol. I., p. 20.

were named in the charter, and sixteen common councilmen, who were elected by the officers who were first mentioned. The succession of these officers was provided for as follows: "And to perpetuate the succession of the said Mayor, Recorder, Aldermen and Common Council in all time to come, WE DO GRANT; That for the future they shall assemble in some convenient place in the said Borough, upon the feast day of St. John the Baptist, in every year, and shall elect and choose by the major vote of such of them as shall be present one other of the Aldermen of the said Borough, for the time being Mayor of the said Borough for the ensuing year. And upon death, removal or resignation of the said Mayor, Recorder, or Aldermen, or any of them, or within one month of such respective death or deaths, removal or removals, resignation or resignations, the rest of the said Aldermen, together with the said Mayor and Recorder, if they should be living, and Common Councilmen or the major part of them shall at a time by them to be appointed meet within the said Borough and elect and nominate some other person or persons to be Mayor, Recorder and Aldermen of the said Borough in the place and places of such persons so deceased as the case may require, so as the said mayor so to be elected and nominated be at the time of such election and nomination actually one of the Aldermen of the said Borough."[1]

There was no qualification as to residence, and the first recorder, Sir John Randolph, attended but one meeting, but appointed a deputy. The second recorder, Henry Tazewell, was an inhabitant of James City county. Not until 1752 was twelve months' residence required to make a man eligible to the common council. The mayor, recorder and aldermen constituted a monthly court called the "Hustings Court," for the trial of cases not exceeding twenty pounds, current money, but in 1765 this court was granted powers

[1] For a copy of the MS. charter of Norfolk (see Appendix) I am greatly indebted to J. Barron Hope, Esq., Editor of "The Landmark," Norfolk, Va.

equal to those of any county court, and its members were placed in the same grade as justices of the county court. The appointment of the town sergeant, who corresponded to the sheriff, and of the town constable was by the hustings court. In laying out the town a place had been left vacant for a school house, and when this was built a dispute arose between the town and county authorities about the right to appoint the teacher. In 1752 the right to appoint was given to the county court and the mayor, recorder and aldermen, but was afterwards conferred upon the corporation alone. The commonalty or common hall, consisting of the mayor, recorder, aldermen and common councilmen made by-laws, laid taxes for erecting lamps, paying watchmen, building magazines and making other public improvements, but the body's power was very limited, for almost everything done by it had first to receive the sanction of the central authorities, *i. e.*, an enabling Act of Assembly. It might appear to-day somewhat ridiculous for a State Legislature alone to give a town, with its properly constituted authorities, the right to decide upon what days markets should be held, or to lay a tax for building a prison, or providing a fire department, but the same principle is still active, and is seen in the case of large cities in this country, which have their police department controlled by the State, their justices appointed by the Governor, and are insufficient to perform, without the consent of the State legislative body, functions which concern them alone.

Before leaving the subject of the governing body it may be of interest to call attention to its possession of some points of resemblance to the merchant guild proposed in 1705. If guild hall be substituted for common hall, benchers for aldermen, and brethren assistants for common councilmen, very little difference could be discovered, for the respective officers had very similar powers. But there was greater respect shown to the principle of local government in the Act of 1705 than in the charter of 1736; the benchers and brethren assistants were to be elected by the people of the borough, and vacancies

in either body were to be filled by a like election. The aldermen of Williamsburg and Norfolk were appointed by the charter and they elected the common councilmen, and as they filled the vacancies in their body, the people had nothing at all to do in the election of their rulers. In many respects the organization of the boroughs resembled, if it was not modelled after, that of the county, and the privileges of the people in each were about the same. The inhabitants of Williamsburg and Norfolk were excused from militia service outside of the borough limits, but at the same time provision was made for a corporation militia and its dependent patrol, with regulations similar to those of the county militia. Each of the boroughs also sent a "citizen" or burgess to the General Assembly, but in his election, those alone could cast a vote, who had a freehold estate in one half an acre, with a house within the town, and apprentices who had resided there five years. Where two persons owned a house and lot in partnership, only one could enjoy the right of suffrage. Some advantages of living in the borough were derived from the market held two or three times a week and from the fairs, with the accompanying opportunities for trade and general intercourse.

The different professional, mercantile, and laboring classes in the boroughs occupied themselves in their several vocations unless there was a performance of the "Beggar's Opera,"[1] some patriotic celebration, a fair with its greased pigs, sack races, and bull baitings, or a court meeting, which brought about a commingling of people of every quality. The presence of the college of William and Mary and of the Assembly kept Williamsburg alive, but Norfolk's commercial relations with the outside world gave it a more bustling appearance, and its situation justified Jefferson's prophecy of its future greatness. In resistance to English aggressions the

[1] Howe: Historical Collections of Va. Forrest: Historical and Descriptive Sketches of Norfolk.

boroughs were prompt and energetic. In 1766 the "Sons of Liberty" were organized in Norfolk in opposition to the Stamp Act, and resolutions were adopted recognizing the sovereignty of George the Third, but expressing the determination to resist the curtailment of the privileges of British subjects, and by corresponding with lovers of liberty to combine the struggles for their rights. Four years later the merchants of Williamsburg and members of the House of Burgesses adopted equally patriotic resolutions, but at the same time determined and bound themselves not to import or sell goods, upon which the English Government had imposed a tax, and then adjourned their meeting to the Raleigh Tavern, where they drank toasts to the King, the royal family, the Governor, British Liberty, Daniel Dulany, and Lord Chatham. Notwithstanding their restricted liberties the boroughs had begun to be "tumores plebis, timores regis," and although it required years for the privileges of the older boroughs to be increased, the Virginian legislators were after the Revolution brought to understand, though imperfectly, the propriety of granting greater liberties to the newly incorporated towns. For a century Virginians had been legislating for towns and town government; the result was but a shadow of what a town ought to be as regards population and administrative methods, but the foundation was laid for the town system of to-day, and there could be no more interesting study than that of the development of Virginia cities from the humble beginnings of the seventeenth century, especially as "accidental circumstances . . . . may control the indications of nature, and in no instances do they do it more than in the rise and fall of towns."[1]

Conclusion.

When the Revolution had succeeded and steps were being taken towards an organized settlement of the great North-

[1] Notes on Virginia, p. 147.

west, Virginia was interested in the matter, and Jefferson, probably the greatest Virginian next to Washington, had considerable to do with the framing of the Ordinance of 1787, which provided for and was the basis of the forms of local government in Illinois and other western States. But the influence of the Virginia county system was felt, although Jefferson was strongly inclined towards the township organization. In 1661, when Sir Wm. Berkeley was instructed to encourage the building of towns in Virginia, the system of New England was pointed out as the model, and one hundred and odd years later the same idea was in the mind of Jefferson.[1] In 1780 he tried to bring about the adoption of a modified form of the township, and the following extract from a letter written by him in 1810 will give his own opinion upon the subject which seems to have been uppermost in his thoughts: "I have, indeed, two great measures at heart without which no republic can maintain itself in strength. 1. That of general education, to enable every man to judge for himself what will secure or endanger his freedom. 2. To divide every county into hundreds, of such a size that all the children of each will be within reach of a central school in it. But this division looks to many other fundamental provisions. Every hundred besides a school should have a justice of the peace, a constable and a captain of militia. These officers or some others within the hundred should be a corporation to manage all its concerns, to take care of its roads, its poor, and its police by patrols, &c., (as the selectmen of the Eastern township.) Every hundred should elect one or two jurors to serve where requisite, and all other elections should be made in the hundreds separately, and the votes of all the hundreds be brought together. Our present Captaincies might be declared hundreds for the present, with a power to the courts to alter them occasionally. These little republics would be the main strength of the great one. We owe to them the

[1] Sainsbury: Calendar of State Papers. Colonial, 1660–1668, p. 110.

rigor given to our revolution in its commencement in the Eastern States, and by them the Eastern States were enabled to repeal the embargo in opposition to the Middle, Southern and Western States, and their large and lubberly divisions into counties which can never be assembled. General orders are given from a centre to the foreman of every hundred, as to the sergeants of an army, and the whole nation is thrown into energetic action in the same direction, in one instant and as one man, and becomes absolutely irresistible." His letter to Kercheval in 1816 was similar, and showed in brief a desire to apply to the government of his State, but on a smaller scale, his doctrine for the government of the United States, "My idea is that we should be made one nation in every case concerning foreign affairs, and separate ones in whatever is merely domestic."[1] He saw, from past experience, the possible effects of centralizing the entire control of a large people in the hands of a few, and in trying to prevent further evils his views were most sound and sensible in the abstract, but he seems to have lost sight of the fact that the State government of the New England States had grown up from the local communities, and that similar local institutions in Virginia would have to be formed downward from the State. Other factors also had to be considered. The people of Virginia had been accustomed for a long period to institutions, which were directly opposed to the Jeffersonian theories of local government, and many changes had to come about before they could be accepted. For innovations cannot be made before the public mind is prepared for them. Legislation is in vain, that does not meet with the approval of the masses, and although it may apparently succeed for a time, yet a point will at last be reached, when the people will be aroused from listlessness and will legislate to suit themselves. Hence it is useless to establish by law institutions for a com-

[1] Washington: Jefferson's Works, Vol. III., p. 249; Vol. IV., p. 317; Vol. V., p. 625; Vol. VII., p. 12.

munity which neither requires nor appreciates them, and where nature has said, "Thus far shalt thou go and no farther." New conditions must arise and a public sentiment in their favor must be created before new rules can be safely made, for it is demoralizing to make laws that have no effect.

For many years the habits of Virginians changed but little. Here and there, along the water, a town became a city by the increase of trade, but plantation life prevailed. There were the same generosity and hospitality, although the fortunes of some had been diminished, which had distinguished the colonial times, and the same dependence upon slaves for almost every kind of labor. The abolition of entail and primogeniture had made it possible for the plantations to be divided and for all the sons to have an equal interest in the property. Otherwise society was the same, although the habits of excessive drinking and dissipation, which Bishop Meade bemoaned as marking the degeneracy of some of the ancient families of his State, were beginning to re-act. The habit of large planting, as distinct from farming, began to tell upon the the resources of the land. Tobacco was the staple, and fields were exhausted by excessive crops, the care of a great mass of slaves became very onerous, and the dark clouds of the coming strife were looming up in the political horizon. Many Virginians left their exhausted estates and settled in new regions, impressing their institutions upon the new communities in the West, Southwest and South. The war came; society was shaken to its very foundations; Virginia was devastated by the marchings of opposing forces, and when those of her sons, who survived the terrible struggle returned to their homes, they were unsettled by the irregular service of five years, and many had little but their hands and brains, with which to begin life again. They set to work, however, and despite the enervating influences of "reconstruction" from without, and change of their manner of living from within, have again placed the State in the line of progress.

As recuperation of resources began, there were made changes looking to a greater localization of power, and there is now a

form of township or district, whose origin can probably be traced to Pennsylvania influences. But the time has not yet come for the creation of more local forms of government, and it would be unwise to try to hasten it by unnatural means. There are signs, however, of a coming change in administrative methods. The abolition of slavery prepared the way; for by that measure, just or unjust, the foundation was laid for the dignifying of labor, for the division of plantations into small farms, and for the allowance of greater opportunities of development to the various trades, that were once confined to negro quarters. The plantation shoemaker and blacksmith have been compelled to shift for themselves, and the result has been seen not only in an increase of the population of the older towns, which has not always been for the better, but also in the beginnings of new ones. The following approximate statistics will show the increase in the number of towns in the last hundred years and in the past ten years. In 1785 the population of Virginia, which then included Kentucky and West Virginia, was about 570,000, and there were not more than twenty-five towns, of which the largest had never contained over seven thousand inhabitants. In 1875 the population, with an area equal to about one-third of that of 1785, was about 1,340,200, and the number of towns had greatly increased. In 1885 the population is over 1,620,000; there are twenty-five towns containing more than 1,000 inhabitants, a metropolis with 64,000 inhabitants in the eastern part of the State, a flourishing commercial centre in the southeast, manufacturing cities in southside and in the Valley, and in the southwest Roanoke, a town of phenomenal growth and a railroad centre destined to become still greater as a site for manufactures and trade. There are, besides, hundreds of villages, which have sprung up in the past few years, and in many cases the process of their development has been about as follows: around a country store or post-office at some cross-roads, a wheelwright, a smith and a carpenter have settled. The place is discovered to be a convenient rendezvous for the neighboring farmers;

a school house is built, and then perhaps a church. A nucleus of a town is thus formed, and as such settlements can be found in different parts of the State, and as Virginia has many inducements for persons with capital, who desire to engage in manufacturing or agriculture, it will require only time and an extension of improved means of communication for some of the villages to grow into large towns. The existence of a great many towns, however, is not necessary for the exercise of local self government, but rather than that there should be an undue increase in town populations, agriculture, commerce and manufactures should advance together, and thus produce a more equal distribution of population and a thorough development of the State's resources. Local government would then be an absolute necessity, and plans for it could be more readily executed. The existing smaller divisions of the county for school purposes, the care of the poor, the repair of roads, and the administration of justice can be used as the basis for a governmental system similar to the western or the northern township, and as soon as a more general diffusion of a true education among all classes, with a closer association resulting from a larger population, has created the need for such decentralized forms of government, the people of Virginia, unless their purpose shall be balked by the schemes of politicians, who naturally prefer a system which can be controlled for election purposes, will produce all necessary local institutions.

VII.

APPENDIX.

COPY OF THE MS. CHARTER OF NORFOLK BOROUGH.

(INCORPORATED THE FIFTEENTH OF SEPTEMBER, 1736.)

George the Second, by the Grace of God, of Great Britain, France, Ireland, King, Defender of the Faith, &c. To all and singular our Faithful Subjects, Greeting:

WHEREAS, a healthful and pleasant place, commodious for trade and navigation, by act of the General Assembly of our Colony and Dominion of Virginia, hath been appointed and laid out for a town, called by the name of Norfolk; which place of late years, especially during the administration of our trusty and well beloved William Gooch, Esq., our Lieutenant Governor of our said Colony, hath very greatly increased in the number of its inhabitants and buildings, in so much that the said town not being capable of containing all such persons as have resorted thereto, divers of our loving subjects have seated themselves and families upon the adjoining lands so far as to a place called the Town Bridge. *Know ye,* That we being willing to encourage all our good and faithful subjects, as well at present residing and inhabiting, as shall or may hereafter reside and inhabit within the said town of Norfolk and the places thereto adjoining, so far as the Town Bridge, at the instance and petition of divers of our dutiful and loyal subjects, inhabitants of the said town and places adjacent, of our Royal grace, good will, certain knowledge, and mere motion, with the advice of our council of our said Colony, have constituted and erected, and by these our LETTERS PATENT do constitute and erect the said town of Norfolk, and the said parts thereto adjoining so far as the said bridge, A BOROUGH, by the name of the *Borough of Norfolk;* and for us, our heirs and successors do by these presents grant to the inhabitants of the said Borough and of the parts adjacent, that the said Borough and the parts adjacent shall be a Borough Incorporate, consisting of a Mayor, one person learned in law, stiled and bearing the office of Recorder of the said Borough, eight Aldermen, and sixteen other persons to be Common Council Men, of the said Borough; which said Mayor, Recorder, Aldermen, and Common Council Men, shall be a body incorporate, and one community forever, in right and in fact;

and by the name of Mayor, Recorder, Aldermen, and Common Council of the Borough of Norfolk, and as such shall be persons able and capable in law to acquire, purchase, and receive manors, lands, tenements, and hereditaments not exceeding one thousand pounds sterling per annum, and all goods and chattels whatsoever, to *have, hold and enjoy,* to them and their successors forever. And also that they the said Mayor, Recorder, Aldermen, and Common Council, by the same name, plead, and be impleaded, prosecute and defend, answer and be answered in all and singular, causes, complaints, actions real, personal and mixt, of what kind or nature soever, in all courts and places, and before all judges and justices whatsoever, and also that the said Mayor, Recorder, Aldermen and Common Council and their successors shall have one common seal to be used for their causes and business and that it shall be lawfull for them the SAID MAYOR Recorder, Aldermen and Common Council and their successors, their said seal to break, change, and to make anew from time to time as to them shall seem expedient; And we will, and by these presents declare, name, and appoint *Samuel Boush* gent, to be Mayor of the said Borough for the year ensuing and afterwards until the day for electing a Mayor herein-after appointed; and Sir *John Randolph,* Knight, to be Recorder for the said Borough; *George Newton, Samuel Boush,* the younger, *John Hutchins, Robert Tucker, John Taylor, Samuel Smith,* the younger, *James Ivey* and Alexander Campbell, gents, inhabitants of the said Borough to be Aldermen thereof for so long a time as they shall well behave themselves in their respective offices and places; and we do further order and direct, that the said Mayor, Recorder and Aldermen, before they shall enter into or upon the execution of their said offices, shall take the several oaths by law appointed for the security of our person and government, and subscribe the same, and the oath by our said Lieutenant Governor, appointed to be taken by the Mayor, Recorder, and Aldermen of the said Borough, and subscribe the test, which oath shall be administered to them by our said Lieutenant Governor, or by such person or persons as he shall authorise and appoint to administer the same.

And we grant that the said Mayor, Recorder and Aldermen, or the major part of them, shall elect and choose other of the most sufficient inhabitants of the said Borough, being freemen thereof, to be of the Common Council of the said Borough, for so long a time as they shall well behave themselves in their respective places, And to perpetuate the succession of the said Mayor, Recorder, Aldermen and Common Councilmen in all time to come, We do Grant, That for the future they shall assemble in some convenient place in the said Borough, upon the feast day of St. John the Baptist, in every year, and shall elect and choose by the major vote of such of them as shall be then present, one other of the Aldermen of the said Borough, for the time being, to be Mayor of the said Borough for the ensuing year. And upon death, removal, or resignation of the said Mayor, Recorder, or Aldermen, or any of them, or within one month after

such respective death or deaths, removal or removals, resignation or resignations, the rest of the said Aldermen, together with the said Mayor and Recorder, if they should be living, and Common Councilmen, or the major part of them, shall at a time by them to be appointed, meet within the said Borough and elect and nominate some other person or persons to be Mayor, Recorder and Aldermen of the said Borough, in the place and places of such person or persons so deceased or removed as the case shall require, so as the said Mayor so to be elected and nominated be at the time of such election and nomination actually one of the Aldermen of said Borough; and so as the said Recorder so to be elected and nominated be a person learned in the law; and so as the Alderman or Aldermen so elected and nominated at the time of such election and nomination, be actually of the Common Council of the said Borough; and the said Mayor, Recorder, Alderman and Aldermen so elected and nominated, shall at the time and place of election take the several oaths above mentioned, and subscribe the same, and subscribe the test; which oath the said Mayor, Recorder, or anyone of the Aldermen may, and is hereby required to administer; and shall then likewise, or on the said feast of St. John the Baptist, out of, and from among the inhabitants and freeholders of the said Borough, elect and nominate so many persons to be of the Common Council as shall be wanting to make up the full number of sixteen persons, and that the persons hereby appointed and named, or hereafter to be elected and nominated Mayor, Recorder, and Aldermen, be Justices of the Peace within the said Borough, the precincts and liberties thereof, and directors of the buildings and streets in the said Borough; and that they or any three of them, whereof the Mayor or Recorder for the time being shall always be one, shall have within the said Borough and the precincts and liberties thereof, full power and authority to make Constables, Surveyors of Highways, and other necessary Officers; and to rule, order and govern the inhabitants, and the buildings and the streets thereof, as Justices of the Peace, and Directors are or shall be authorised to do, and shall have power, and may execute all the Laws, Ordinances and Statutes in that behalf made, as fully and amply as if they were authorised thereto by express commission, willing and commanding that no other Justices of the Peace or quorum within our said Colony do at any time hereafter take upon them, or any of them, to execute the office of a Justice of the Peace within the said Borough or precinct thereof, in any cause, matter or thing hereby declared to be cognizable by the said Mayor, Recorder and Aldermen, notwithstanding any commission at large authorising them thereunto, saving always the authority and jurisdiction of our Justices of the Peace of our County of Norfolk, nor at any time hereafter to be assigned during the time of their holding their Courts in the said Borough, saving also to all and every other Judges, Justices and Officers, all such rights, powers, Jurisdictions and authorities granted, or which shall be granted to them or any of them by any statute or any act of Assembly of this Colony.

And further, we will grant unto the said Mayor, Recorder, Aldermen and Common Councilmen of the said Borough for the time being, full power and authority to erect work houses, houses of correction, and prisons within the said Borough, and to make, order and appoint such by-laws, rules and ordinances for the regulation and good government of the trade and other matters, exigensies and things, within the said Borough and precincts, as to them or the major part of them shall seem meet, and to be consonant to reason and justice and not contrary but as near as conveniently may be agreeable to the laws, acts of Assembly and statutes now in force; which said by-laws, rules and ordinances shall be observed, kept and performed by all manner of persons trading or residing within the said Borough, under such reasonable pains, penalties and forfeitures as shall be imposed by the said Mayor, Recorder, Aldermen and Common Councilmen, or the major part of them there assembled, from time to time, not exceeding forty shillings, current money of Virginia; which said pains, penalties and forfeitures shall be levied by distress and sale of the goods of the person offending, to be employed for the public benefit of the said Borough at their discretion.

And further, we have given and granted unto the said Mayor, Recorder, Aldermen and Common Councilmen of the said Borough, and to their successors forever, and to all freeholders of the said Borough owning half a lot of land with a house built thereon according to law, and to all persons actually residing and inhabiting in the said Borough having a visible estate of the value of fifty pounds current money, at the least; and all persons who shall hereafter serve five years to any trade within the said Borough and shall after the expiration of their time of service be actually house keepers and inhabitants of said Borough; and for us and our successors, by these presents do give and grant to them full powers and absolute authority to name, elect, and send one Burgess out of the inhabitants actually residing and being within the said Borough; which Burgess elected shall have a freehold or visible estate within said Borough of the value of two hundred pounds sterling; and if such person so elected be not actually residing within the said Borough, then he shall have a freehold or other visible estate of the value of five hundred pounds sterling, to be present, sit and vote in the house of Burgesses of our said Colony of Virginia, and there to do and consent to those things which by the Common Council of our said Colony shall happen to be ordained. And do hereby grant and order that writ or writs of election of a Burgess for the said Borough shall be issued and sent to the said Mayor, Recorder and Aldermen, for the time being, when and so often as a General Assembly shall be called, or occasion shall require:—*Provided always*, That all such electors and voters shall and do, before they be admitted to give their votes at each election, make oath of their freehold, and the value of their personal estate, if the candidates or other electors shall require the same to be done.

And further, we, of our especial grace, certain knowledge and mere motion, for us, our heirs and successors, by these presents give and grant to

the said Mayor, Recorder, Aldermen and Common Council of the said Borough, and to their successors forever, full and free license, power and authority, to have, hold and keep three Markets weekly in some convenient place in the said Borough, to be by them appointed (that is to say) on every Tuesday, on every Thursday, and on every Saturday in the week; and also two Fairs yearly, to be held and kept on the first Monday in October, and on the first Monday in April, in every year, for the sale and vending all manner of cattle, victuals, provisions, goods, wares and merchandise whatsoever, on which Fair days, and on two days next before and on two days next after each of the said Fair days, all persons coming to, or being at the said Fair, together with their cattle, goods and merchandise, shall be exempted and priviledged from all arrests, attachments, or executions, except from toll and process from the Court of Pie-Poudre; and that the said Mayor, Recorder, Aldermen and Common Council, and their successors forever, shall have power to set such reasonable toll on all such cattle, goods, wares and merchandise, and all other commodities, as shall be sold in the said Markets and Fairs respectively, as shall be by them thought reasonable, not exceeding six pence on every beast, and three pence on every hog, and the twentieth part of the value of any other commodity sold therein;—*Provided always*, That the toll to be rated and assessed on the cattle and goods so sold, which shall be belonging to the freeman inhabitants of the said Borough, shall be but one half of the said toll which shall be rated on persons not freemen of the said Borough; and that the said Mayor, Recorder and Aldermen, or any three of them, of which the Mayor, or Recorder shall be one, shall and may hold a Court of Piepoudre, during the time of the said Fairs, for hearing and determining all controversies, suits and quarrels, that may arise and happen therein, according to the usual and legal courses in the like cases in England; and we do, for us and our successors, give and grant to the said Mayor, Recorder, Aldermen and Common Council, and their successors forever, all and every toll, profits and perquisites arising, due and incident from or to the said Markets, Fairs and Courts of Piepoudre, to be and by them, or the major part of them, used, laid out and expended for the benefit and advantages of the said Borough.

And further, we do grant, for us and our successors, that the said Mayor, Recorder and Aldermen, and their successors, or any four or more of them, of which the said Mayor Recorder or the last preceding Mayor or Senior Alderman shall be one, shall hold a Court of Hustings once in every month within the said Borough, of which Court they are hereby empowered to appoint and make Clerks and other proper officers from time to time as there shall be occasion, and to settle and allow reasonable fees, not exceeding the fees now settled and allowed in our County Courts of our said Colony; and shall have jurisdiction and hold plea of trespass and ejectment, and of all writs of dower for any lands and tenements within the said Borough, and all other acts personal and mixed, arising within the said

Borough, precincts and liberties thereof, and as a Court of Record, give judgement and award executions thereon, according to the Laws and Statutes of England, and of the said Colony; *Provided*, the demand in the said action personal and mixed do not exceed twenty pounds, current money, or four thousand pounds of Tobacco.

And provided nevertheless, That any party or parties, plaintiff or defendant, shall be at liberty to appeal from the judgement of the said Court of Hustings to the General Court, or to obtain a Writ of Error, or Supercedeas to such judgement returnable to the said General Court, under such limitations, rules and orders as are already prescribed and set down by the Act of Assembly, or Rules of the said General Court, for obtaining and prosecuting Appeals, Writs of Error, and Supersedeas, from the Judgement of the County Courts to the General Court.

IN WITNESS WHEREOF, we have caused these our letters to be made Patent; witness our trusty and well beloved William Gooch, Esq., our Lieutenant-Governor, and Commander-in-Chief of our said Colony and Dominion of Virginia, at Williamsburg, under the Seal of our said Colony, the fifteenth day of September, one thousand seven hundred and thirty-six, in the tenth year of our reign.

(Signed) WILLIAM GOOCH.

A copy by C. R. C.

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IV

RECENT AMERICAN SOCIALISM

"Opinio omnis ad eam spem traducenda, ut honestis consiliis justisque factis non fraude et malitia se intelligant ea quae velint consequi posse."—*Cicero.*

"Das Gewebe dieser Welt ist aus Nothwendigkeit und Zufall gebildet; die Vernunft des Menschen stellt sich zwischen beide und weiss sie zu beherrschen; sie behandelt das Nothwendige als den Grund ihres Daseins, das Zufällige weiss sie zu lenken, zu leiten und zu nutzen, und nur indem sie fest und unerschütterlich steht, verdient der Mensch ein Gott der Erde genannt zu werden."—*Goethe.*

"The nation and the individual exist in an organic and moral relation, in which the normal development of each has as its condition the development of the other, and their unity is formed after the law of a moral unity."—*Mulford.*

JOHNS HOPKINS UNIVERSITY STUDIES
IN
HISTORICAL AND POLITICAL SCIENCE

HERBERT B. ADAMS, Editor

History is past Politics and Politics present History — *Freeman*

THIRD SERIES

IV

RECENT AMERICAN SOCIALISM

BY RICHARD T. ELY, Ph. D.

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PREFACE.

"I presume you have felt, as have I, the sting of criticism and censure—of misrepresentation because discussing this topic of socialism at all." These are words written to me in a letter recently received, by a friend who is professor of political economy in a prominent Western university. They indicate at once a difficulty in the way of the economist. The topics he discusses are so vital, that any presentation of them is bound to be misconstrued in some quarter. Nevertheless, there seems to be only one course for an honest man, which is to say his word and patiently endure misunderstanding and even malicious abuse. But it may not be out of place for me to state the purpose of this monograph.

The aim of the present paper is so clear that only unfortunate experience in the past leads me to explain it in the preface. When my "French and German Socialism" was published, one ill-natured critic complained because my opinions were not distinguished from the opinions I was endeavoring to expound. This criticism was echoed in other places. Now it had not occurred to me that it was necessary to thrust my opinions upon the reader of the history of French and German Socialism. In reading works covering like ground I had often been annoyed by childish criticism such as must occur to every boy, criticism thrust into the midst of the presentation of some theoretical system, so I resolved to abstain from anything of the kind and thought it sufficient to let the facts speak for themselves.

The aim of this monograph is quite similar. It is primarily a presentation and not a refutation. It will be read chiefly by well-educated men, in comfortable circumstances, and of moral natures sufficiently elevated to understand that we ought not to lie, murder, and blow up cities with dynamite to accomplish our

ends. I do not think it necessary to tell them this. I do not think it incumbent upon me to say on every page that I am so far from sympathizing with schemes for destruction, that I regard them as damnable.

I have tried first to understand American socialism, and then to present it in such manner, that others may likewise understand it. I have endeavored to let the parties concerned speak for themselves, as far as possible. Newspapers and magazines are full of arguments against socialism, but it is not plain that the foe is always known.

As to dangers to be apprehended, opinions will differ. The New York *Tribune*, which I have to thank for many generous words in times past, rebukes me rather severely for what it holds extreme pessimism. The basis of this criticism is a few words hastily uttered in an interview and dragged violently out of their connection. However, the writer in the *Tribune* points out the undoubted fact that the distress and discontent were quite as pronounced in the first half of this century in England as now in America, and that, although there was no dynamite then, "incendiarism did more mischief than dynamite has ever done. Famine, riots, organized outrages, brigandage, epidemic diseases, made the country seem a pandemonium." This is true, but the different nature of the discontent at the present time is overlooked. So far were the men of those days from desiring a general destruction of present society, that the terrible "charter" demanded nothing more radical than universal suffrage and annual elections. Discontent then gave rise to a kind of socialism, but of a very different character from that described in these pages. Its leaders were men of large mind and generous nature like St. Simon, Fourier and Louis Blanc, who sought universal peace in peaceable manner. This difference appears to me of importance.

Of course we all hope for the best, but in the meantime it may be safer to fear what is worse, and it can do no harm to be watchful. It is pleasant to believe that no cause for anxiety exists, but it is impossible not to remember the funeral oration Sir John Campbell pronounced over Chartism in 1839. "He spoke at some length, and with much complacency, of Chartism as an agitation which had passed away. Some ten days afterward occurred the most formidable outburst of Chartism that had been known up

to that time, and Chartism continued to be an active and a disturbing influence in England for nearly ten years after."[1]

Nor was it merely a return to prosperity which terminated for the time dangerous agitation. It was also the active efforts of noble men like Thomas Hughes, Charles Kingsley, and Frederick Maurice, whose devotion to the cause of labor has in England, partially at least, bridged the gulf between poor and rich, and whose services now live in large movements for the elevation of the laboring classes.

In conclusion, it is proper to state that this monograph is to some extent a second, enlarged, and revised edition of articles which appeared in the *Christian Union* a year ago. These articles have been used freely, both by pulpit and press, sometimes with generous recognition of the source of information, perhaps oftener without mention either of their author or the *Christian Union*. The consequence is that some parts of it may have a familiar appearance to those who never saw the articles in the *Christian Union*. I desire to say that the information in this monograph is taken at first hand from socialistic newspapers and other materials carefully collected for several years, as well as from lectures, addresses, and private conversation.

RICHARD T. ELY.

JOHNS HOPKINS UNIVERSITY, *April* 7, 1885.

[1] McCarthy's "History of Our Own Times," I., 5.

RECENT AMERICAN SOCIALISM.

I.

Retrospective.—Early American Communism.

The practical character of the American is a matter of common report, and a cause of national pride. The citizen of the New World is not content with mere speculation; his nature craves action, and nowhere else does practice follow so closely upon theory. This trait shows itself in social movements as well as elsewhere. Young as is America she has already furnished a field for the trial of a large number of romantic ideals of a socialistic nature, and promises ere long to outstrip all that has been accomplished by all other nations in all past time in the way of social experimentation.

Confining ourselves to attempts to realize various forms of socialism and communism, the mind naturally reverts to the "oldest American charter," under which the first English settlement was made on American soil. One condition stipulated by King James was a common storehouse into which products were to be poured, and from which they were to be distributed according to the needs of the colonists, and this was the industrial Constitution under which the first inhabitants of Jamestown lived for five years,[1] during which the idlers gave so much trouble that the old soldier, Captain John Smith, was forced to declare in vigorous language, and

[1] Cooke's Virginia, Chap. III. The date of the charter is 1606.

with threats not to be misunderstood that "he that will not work shall not eat." "Dream no longer," continued Smith, "of this vain hope from Powhatan, or that I will longer forbear to force you from your idleness or punish you if you rail. I protest by that God that made me, since necessity hath no power to force you to gather for yourselves, you shall not only gather for yourselves, but for those that are sick. They shall not starve."[1]

The first Pilgrims who emigrated to New England, were bound by a somewhat similar arrangement which they had entered into with London merchants, but the issue of the experiment was not more successful, and it was partially abandoned; not wholly, for a great deal of land was long after held in common and, indeed, to-day, there are small parcels of this land still common property.[2] As is well known, the Boston common is but a survival of early communism, as in fact its very name indicates.

It must be acknowledged that comparatively little importance attaches to either of these experiments. The Jamestown communism seems never to have been regarded as anything more than a temporary makeshift, and the similar arrangement in New England was of a like nature. There exist to-day in America far larger and more important communistic societies living in peace and great comfort, even in wealth. As far as the common lands are concerned, they are part of a large system of early landholding which still survives to greater or less extent, both in America and Europe.

But two years before the Declaration of American Independence there came to this country a body of men and women with the avowed determination to lead a purely communistic life for all future time. These were the Shakers whose first settlement, that of Watervliet, was begun in 1776. Their own

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[1] Cooke, l. c., p. 54.

[2] H. B. Adams, Germanic Origin of New England Towns, Studies I., No. 2, p. 33.

statement of their principle of Christian Communism is in these words: "The bond of union which unites all Shakers is spiritual and religious, hence unselfish. All are equal before God and one another; and, as in the institution of the primitive Christian church, all share one interest in spiritual and temporal blessings, according to individual needs; no rich, no poor. The strong bear the infirmities of the weak and all are sustained, promoting each other in Christian fellowship, as one family of brethren and sisters in Christ."[1] It is thus seen that pure communism in America is of the same age as American independence. This is not the place to describe the other peculiar doctrines and practices of the Shakers, as celibacy, confession, and separation from the world. Their numbers soon began to increase and they early founded communistic villages in most of the New England States, in some of the Middle and in a few of the Western States. At one time they numbered between five and six thousand, but when Mr. Hinds wrote his book their membership had fallen to about twenty-four hundred, grouped in seventeen societies, their largest community being at Mount Lebanon, New York, and comprising nearly four hundred souls.

The Shakers are of English origin. Their first leader, Ann Lee, came to America from England with eight followers, but her preaching soon won numerous converts, and the second person who followed her in the ministry was Elder Joseph Meacham, a man of American birth, who seems to have been more powerful as an organizer than either of his predecessors.

Early in this century, another body of communists came to the United States from Germany to escape religious persecution. They are called Harmonists, and after a period of migration settled at Economy near Pittsburgh in Pennsylvania, where they now reside. Their first leader, George

[1] Quoted from "American Communities," by Wm. Alfred Hinds, Oneida, N. Y., 1878.

Rapp, a man of great ability and extraordinary force of character, commanded their confidence and governed the community with such prudence and foresight as to lay the foundations of their present wealth, which is estimated at several millions of dollars. But their numbers have declined while their property has increased in value. At one time their membership comprised a thousand souls; at present they do not exceed one hundred. They are celibates and believe that communism is an essential part of Christianity. The Germans have established other communities, as at Zoar in Ohio, and at Amana in Iowa, in both of which marriage is allowed. The latter is the largest of American communistic societies, and embraced sixteen hundred members in 1878,[1] who owned upwards of twenty-five thousand acres.

The French have established a remarkable community, called Icaria, in which they have attempted to realize the pure non-religious communism of Cabet, the author of the charming communistic romance, "Voyage en Icarie." The Icarians came to America in 1848, and were under the personal direction of Cabet for several years, during which they achieved a remarkable degree of prosperity. Their eventful and picturesque history, the most interesting and instructive chapter in the annals of this early American communism, is narrated in Dr. Shaw's admirable book, "Icaria."[2] The work, "Icaria," at once pathetic and romantic, gives us such an insight into the nature of the earlier phases of communism in America, as is afforded by no other publication, and to it the reader is referred for further information in regard to this subject.

American-born citizens have also founded communities, of which the most prosperous is that of the Perfectionists at Oneida, New York, whose "builder" was John Humphrey

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[1] This, like many of the facts in this chapter, is taken from the works of Mr. Hinds, to which reference has already been made.

[2] New York, 1884.

Noyes, son of a member of Congress. The family of Mr. Noyes is described as one of the best, while he himself is a college graduate, has studied at the Yale Theological Seminary, and is undoubtedly a man of fine ability.

Space is too limited to permit the enumeration of the many other communities established in America. The two great periods of a revival of interest in communism, and the foundation of village communities based on that principle, are, 1826, when Robert Owen visited this country and received distinguished attention from the American people, and 1842–6, when under the lead of Horace Greeley, Albert Brisbane, Charles A. Dana, and others, Fourierism extended itself rapidly over the country. Mr. Noyes in his work, "History of American Socialism,"[1] mentions eleven communities founded during the first period, and thirty-four which owed their origin to the second revival of communism. It seems safe to say that considerably over one hundred, possibly two hundred communistic villages have been founded in the United States, although comparatively few yet live. Mr. Hinds in his directory of communism mentions twenty-seven communities. In 1874 Mr. Nordhoff, after personal inspection of the communistic settlements in the United States, estimated the wealth of seventy-two communities at twelve millions of dollars, their numbers at five thousand, more or less, and their landed property at over one hundred and fifty thousand acres, which is a great decline from an earlier period in respect to membership at least.

Forty years ago men of high education and large ability thought that communistic villages would revolutionize the economic life of the world. The process, a speedy but peaceable one, was viewed in this way: The community where all live together harmoniously as brothers with no *meum et tuum*, but with all things in common, affords the only escape from the warring, competitive world of the present where some die

[1] Philadelphia, 1870.

of excessive indulgence in luxuries and others of starvation, and where the future of no one is secure. When a few communities have been established, the happy Christian life which men there lead will attract the attention of outsiders and win them to join the brotherhood of communism. Thus community will follow community with ever accelerating ratio until the entire earth is redeemed. Cabet, for example, "allowed fifty years for a peaceful transition from our present economic life to communism. In the interval, various measures were to be introduced by legislation to pave the way to the new system. Among these may be mentioned communistic training for children, a minimum of wages, exemption of the poor from all taxes, and progressive taxation for the rich. But 'the system of absolute equality, of community of goods and of labor, will not be obliged to be applied completely, perfectly, universally and definitely, until the expiration of fifty years.'"[1]

All these hopes have been generally abandoned as idle dreams, and it is due largely to experiments made in America that the enthusiasts of fifty and sixty years ago have been disillusionized. It is not that the communistic life itself has in every case proved a disappointment. On the contrary, thousands have clung to it with affection through trial, adversity and evil report, and have felt themselves amply repaid for every sacrifice in their new life, while others who have abandoned it, have looked back upon their experience with fond regret. Thus one member of the celebrated Brook farm community uses these words with reference to their feelings in regard to that experiment: "The life which we now lead, though to a superficial observer surrounded with so many imperfections and embarrassments, is far superior to what we were ever able to attain in common society. There is a freedom from the frivolities of fashion, from arbitrary restrictions and from the frenzy of competition. . . . There

[1] Ely's French and German Socialism, New York, 1883, p. 50.

is a greater variety of employments, a more constant demand for the exertion of all the faculties, and a more exquisite pleasure in effort, from the consciousness that we are laboring, not for personal ends, but for a holy principle; and even the external sacrifices which the pioneers in every enterprise are obliged to make, are not without a certain romantic charm."

But the communities failed to win adherents, often failed to continue their own existence. Unthought-of obstacles were encountered in human nature. Idleness was an evil to be contended with, though this seems to have been one of the lesser obstacles in most cases.[1] Petty jealousies have proved more serious, and personal differences, such as are bound to spring up between unregenerate men living in any close connection, have been rocks upon which many a community has made shipwreck. During a period of poverty the struggle for existence has often knit the members of communities firmly together into a compact whole, which has become disorganized by the inability to endure the severer trials of a period of prosperity when factions arise and party bickerings become intolerable. Then the life is too small and commonplace to satisfy the cravings of many of larger natures. There is so little scope for ambition, and ambition is one of the chief traits of mankind. Cleverly contrived and fantastic arrangements like those of Fourieristic phalanxes have never been found to exercise any magic qualities either on converts or the sinful world. Men have not been attracted sufficiently to join the communities in large numbers, because, either for good or for ill, the spirit of the selfish world has been too strong to be deeply touched by the spectacle of generous self-renouncing communism. The flesh-pots of the Egypt of competition have proved stronger than the Canaan of communism, though the latter even now often flows with abundance of milk and honey.

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[1] "The testimony of all communities is that the lazy are easily induced to work by a little friendly criticism and kind persuasion." *The Communist*, July 1, 1878.

Early American communism is antiquated; it exists only as a curious and interesting survival. Yet it has accomplished much good and little harm. Its leaders have been actuated by noble motives, have many times been men far above their fellows in moral stature, even in intellectual stature, and have desired only to benefit their kind. Its aim has been to elevate man, and its ways have been ways of peace. It is impossible to survey its history without a certain feeling of sadness, and we turn from it with a gentle *requiescat in pace.*

II.

Henry George and the Beginnings of Revolutionary Socialism in the United States.

Henry George's work, "Progress and Poverty," was published in 1879. In 1885, not six years later, it is possible to affirm without hesitation that the appearance of that one book formed a noteworthy epoch in the history of economic thought both in England and America. It is not simply that the treatise itself was an eloquent, impassioned plea for the confiscation of rent for the public good as a means of abolishing economic social evils, but rather that the march of industrial forces had opened a way for the operation of ideas new and strange to the great masses. A wonderful epoch of discovery and invention had brought to the service of man the mighty powers of nature in such manner as to accomplish results surpassing the dreams of enthusiasts and the operations of the magician's wand in the fairy tale. This ushered in a period of unparalleled increase of wealth which was sufficient to transform the face of the earth in a single generation, and its beneficent fruits made optimists of men.

But all the products of the age were not beneficent. The new ways required a displacement and readjustment of labor and capital, under which many suffered grievously. Doubtless progress led to the common good "in the end," as people

say, but many perished in the way before the end was reached. Much capital which could not be withdrawn from its old use was lost, to the impoverishment of its owners, and acquired skill was in not a few cases rendered superfluous. To take a single concrete example, let one think of the inns which fifty years ago flourished along the great mail and stage routes. How many were ruined in the improvements which George Stevenson and his locomotive have finally made a daily necessity? Again, advanced processes and labor-saving machinery frequently throw men entirely out of employment, though after a time the demand for laborers may increase immensely, as has occurred in the case of spinning and weaving.

But for the time being men suffer, and the time being is an important factor to men who live from hand to mouth, as is the case with a great part of mankind. Those who suffered, often complained bitterly, and at times uttered dire threats which were occasionally executed in part at least. All this has long been a familiar fact in Europe. From the termination of the Napoleonic wars till the discovery of gold in California and Australia was a period of distress in England, and what Sismondi saw in the crisis of 1819 when on a visit to that country, produced such an effect upon him that he felt compelled to throw overboard the political economy of Adam Smith, to which he had previously adhered, and to write his "Nouveaux Principes d'Économie Politique." The example of England is not an isolated one.

In the United States, however, there was abundance of fertile, unoccupied land on every side, and the undeveloped resources of the country were boundless, both in extent and in their potentialities for production of wealth. While some suffered doubtless, they were comparatively few, and the tremendous strides with which America was advancing in power and prosperity caused them generally to be overlooked. The bloom and fruitage of the age regarded from a materialistic, economic standpoint seemed almost wholly beneficent, and Americans as a rule were optimists. But a change was

impending. A severe crisis in 1873, with all its train of varied disasters, checked economic progress and brought the crushing weight of poverty upon tens of thousands. This was not the first industrial crash in America, to be sure, but it is doubtful whether any other followed on an era of such prosperity.

Then the wealth of a few had increased enormously during the civil war, while luxury such as had scarce entered the day-dreams of our fathers, extended itself over the land. Never before had there been seen in America such contrasts between fabulous wealth and absolute penury. Population was denser and there was not exactly the same freedom, the same ease of movement. In short, from one cause and another, in many quarters bright visions gave place to gloomy forebodings, and six years later the ground was ripe for the seed sown by Henry George, till then an obscure journalist in the "Far West," and the harvest has already been abundant while the promises for the future are overwhelming.

Ten years ago English-speaking laborers were considered too practical to listen to dreamers of dreams and heralds of coming Utopias. The sturdy common sense of English and American workingmen was thought an all-sufficient shield against the speculations of continental philosophers, and the allurements of French and German agitators. Now all that is changed. The models of order threaten to form the vanguard of a rebellious army.

Henry George has rendered two distinct services to the cause of socialism. First, in the no-rent theory, or in other words, the confiscation of rent *pro bono publico*, he has furnished a rallying point for all discontented laborers; second, his book has served as an entering wedge for other still more radical and far-reaching measures. It is written in an easily understood, and even brilliant style, is published in cheap form, both in England and America, and in each country has attained a circulation, which for an economic work is with-

out parallel. Tens of thousands of laborers have read "Progress and Poverty," who never before looked between the two covers of an economic book, and its conclusions are widely accepted articles in the workingman's creed.

Labor papers, otherwise not decidedly socialistic and not long since holding aloof from all radical social reforms, now accept the no-rent theory; and of this sufficient evidence may be found in the representative journals of organizations like the Knights of Labor. Two newspapers devoted to the interests of laborers, lie on the table before the writer. One of them, published in Baltimore, in commenting on the last Congress of the Socialistic Labor Party in that city, declares, "we do not agree with these socialists," and yet it makes propaganda for "Progress and Poverty," which it offers as a premium to all subscribers; while the editor of the other, a Buffalo sheet,[1] makes room in the same number for a long and favorable account of a speech by Henry George and a letter from a New York correspondent, bewailing the discredit brought upon "our movement" by "the ravings" of "advanced socialism." More marked still is the spread of the no-rent theory in England, where indeed Henry George first became famous. It was adopted by a large majority by the Trades Union Congress in that country in 1882, and has been accepted by the miners in the North of England. Even the English monthly "Christian Socialism" leads a crusade in behalf of "Progress and Poverty." Socialists very generally accept the "no-rent" theory as a chief article in their creed, and one of the first to be realized. If they often reject Henry George's statement of his propositions, it is to their form rather than to their substantial purport they object.

A New York organ of the Socialistic Labor Party published about two years ago a "Declaration of Principles," of which the first sentence read as follows: "The land of every country is the common inheritance of the people in that

[1] Buffalo *Truth*, April 15, 1883.

country, and hence all should have free and equal access to its settlement."

And a little later the San Francisco *Truth*, a rabid socialistic paper, published this "economic" law: "Warning! Landowners look out! There are breakers ahead! This is the new law governing the price of land in both city and country. The price of land is determined by the sale of Henry George's 'Progress and Poverty,' falling as it rises, and rising as it falls. It is now past its hundredth edition, and it is going faster than ever. In ten years from now, town lots will not be worth more than the taxes! Private property and land is doomed!"

The fruit this book is bearing was seen in the parade of workingmen in New York on September 5, 1883, in which according to one account 10,000, according to another 15,000 laborers participated under the auspices of the Central Labor Union. Banners were carried on which such sentiments as these were inscribed: "Workers in tenement-houses—idlers in brown stone fronts;" "Jay Gould must go;" "Which shall it be, the ballot or Judge Lynch." A cartoon was also displayed, called "The Situation," which pictured "Capital" as flying a kite, entitled "Rent," while its tail bore aloft "meat, coal, flour, prices." Another motto was the characteristic one which implicitly represented the labor-crusade as a religion, and the coming government as a church: "Labor is the Rock on which the government of the future must be built."

This parade may be regarded as an epoch in the history of labor movements in this country. So far as the writer is aware it is the first time large bodies of American laborers have acted publicly with out-spoken socialists, and have marched under revolutionary banners. In this occurrence may be seen the two-fold character of Henry George's work. "No-rent" united all and opened the way in the minds of laborers for other features of advanced socialism.

It is then of interest to know the precise nature of this socialism which is being preached to our laborers.

Several questions naturally suggest themselves. What are the ultimate aims of American socialists? How do they expect or desire to attain their purposes? What is the precise character of their agitation? Is any danger to be apprehended from this agitation? If so, what is its extent, and what measures should be adopted to ward off these dangers? An attempt will be made to answer these questions in the course of the present monograph.

There are in the United States two distinct parties of socialists, which may be called revolutionary since they both aim at an overthrow of existing economic and social institutions, and the substitution therefor of radically different forms.

These two parties are known as the "Socialistic Labor Party" and the "International Workingmen's Association," or "International Working People's Association," designated usually by their respective initials S. L. P. and I. W. A., or I. W. P. A. The Internationalists are also called Anarchists and sometimes the "reds," while the members of the other party are occasionally dubbed the "blues." One sees these initials continually in their publications, and upon them incessant repetition seems to have conferred in the minds of socialists a peculiar cabalistic quality.

It may be well to devote a few words to their general characteristics and to a short account of their origin, before passing over to a more detailed description of each.

These parties differ in most important particulars, although they agree upon certain fundamental propositions. Their divergence is first and foremost one of method. The Internationalists are a party of violence, believing in the use of dynamite and like weapons of warfare as a means of attaining their purpose, while the adherents of the Socialistic Labor Party condemn these tactics, and some of them have not renounced all hope of a peaceable revolution of society. The next difference which attracts the attention is the superior character of the men of the latter party as compared with those of the former. The Socialistic Labor Party is composed of more highly edu-

cated and more refined men. It is largely due to this diversity of method and of personal qualities that the members of the two parties have found it impossible to act harmoniously together, and are, indeed, at present at swords' points. There are also important differences of doctrine, but these, as more complicated, will be described in the detailed treatment of the parties.

The points of agreement are, as has been said, fundamental, and it is well at the start to clear away a misapprehension which exists in the minds of many by mentioning a negative particular, in which all socialists agree. It seems, indeed, to be necessary to begin every article, monograph or book on the theory of socialism by the statement that no one advocates, or even desires an equal division of productive property. What they wish is a concentration of all the means of production in the property of the people as a whole, and the distribution of the income, that is, of the products only, either equally or unequally, according to the views entertained of what is just and expedient.

The program of American socialism then includes primarily the substitution of some form of exclusive coöperation in production and exchange, for the present leadership of "captains of industry" in production and exchange, or capitalistic system, as it is termed, and the abolition of private property in land and capital to make room for common property. In other words both parties regarding the wage-receiver as practically a slave, desire the advent of a time when coöperators shall take the place, both of industrial master and industrial subordinate. Both wish to abolish the possibility of idleness, and to make of universal application the maxim: "He that will not work, neither shall he eat."

Both parties are materialists, though the materialism of the Socialistic Labor Party, is less gross than that of the Internationalists. Having abandoned hope of a happy hereafter in which the poor but honest and God-fearing laborer shall find rich reward for all toil and suffering patiently borne, they

have determined to enjoy this life, and, as it is not light to believe that there is no blessedness in the universe, they imagine this earth designed to be a Paradise. They talk of its beauties and of the soul-satisfying delights of life, from all of which they are debarred by a conspiracy of the rich or at least by existing economic conditions. They accept the designation "Godless" and claim that the visible universe is the only God which they know, falling thus into a kind of materialistic pantheism.[1]

It is interesting to notice the general view all modern socialists take of society as a growth. Each social form is regarded as an era in the development of society; useful in its time but after awhile becoming antiquated, it must give way to an advanced organism. Slavery, serfdom and wages were not unjustifiable, they hold, but the Internationalists and moderates think that these institutions have all had their day, have fulfilled their purpose and are no longer needed among the nations of civilization, though there may still be regions where they are not yet antiquated. "We do not deny," says one of these socialists, "that there are countries that have not yet outlived the wage-system, but we have certainly outlived it in the United States, and cannot safely continue it."[2] Socialism is then coming just as the leaves are coming in spring, and just as these will be followed by bloom and fruitage. It is not of human willing, but as inevitable and necessary as the law of gravitation. All that the more sensible among them profess to be able to do is to guide and direct the mighty forces of nature, which manifest themselves in social revolutions and convulsions. Thus it was natural for the resolutions presented to the meeting of Anarchists held in Chicago on Thanksgiving day of last year to begin, "Whereas, we have *outlived* the usefulness of the

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[1] V. Two articles entitled "die Gottlosen" in *der Sozialist*, d. 31 Januar, and d. 7 Februar, 1885.

[2] V. *The Alarm*, Dec. 6, 1884. Article, Coöperation.

wage and property system, that it now and must hereafter cramp, limit and punish[1] all increase of production, and can *no longer* gratify the necessities, rights and ambitions of man," etc.

It may be stated that in general the teachings of Carl Marx are accepted by both parties, and his work on capital ("Das Kapital") is still the Bible of the Socialists.[2] This work has not as yet been translated into English, although a translation is announced for the near future; but extracts from it have been turned into our tongue and published; and brochures, pamphlets, newspapers and verbal expositions have extended his doctrines, while H. M. Hyndman has expounded the views of the great teacher in his "Historical Basis of Socialism" in England.

In this country, a young enthusiast, Laurence Gronlund, a lawyer of Philadelphia, has written a recently published work, entitled "The Coöperative Commonwealth," designed to present the socialism of Marx, as it appears after it has been digested, to use the author's words, "by a mind Anglo-Saxon in its dislike of all extravagancies, and in its freedom from any vindictive feeling against *persons* who are from circumstances what they are."

It is difficult and perhaps impossible to trace out the first germs of revolutionary socialism in America, although it is certain that it is not descended from early American communism, to which it has little resemblance. The influence of the later movement on the earlier has, however, been more

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[1] The writer gives his quotations *verbatim et literatim*, making no attempt to improve style or grammar.

[2] Recently one of their papers, the New Yorker *Volkszeitung*, protested against this epithet as applied to the work of Marx, as it was not desired that any book should be regarded in the light of an infallible guide. It was feared that this would hinder progress. Yet the term describes better than anything else the actual feeling towards "Das Kapital," and among the more ignorant of the socialists reverence for a great leader has ere this approached idolatry.

perceptible, but even that has been comparatively slight. It is not unlikely that something of the spirit of revolutionary socialism may have been brought to this country by the German emigrants of 1848, though it did not spread greatly under the unfavorable conditions which it encountered. In 1865 a ripple on the surface of the waters which Lassalle had troubled reached our shores, and a small band of his followers organized in New York. Their union was of short duration, and three years later another attempt at the formation of a socialistic association was made which likewise proved uneffectual.[1] In 1866 there had been formed a "National Labor Union," which was a consolidation of the members of a great part of the trades' unions and labor organizations in the United States. Its membership is said to have numbered six hundred and forty thousand in 1868, and in the following year it sent a delegate, by name Cameron, to the Congress of the International Workingmen's Association,[2] held in Basle, Switzerland. This led to a connection between American labor and European socialism, which has never since altogether ceased. In 1871 a new impulse was received from the French refugees who came to America after the suppression of the uprising of the commune of Paris, and brought with them a spirit of violence,[3] but the most important event of this early period was the order of the Congress of the International held in the Hague in 1872, which transferred to New York the "General Council" of the Association. Modern socialism had then undoubtedly begun to exist in America. The first proclamation of the council from their new headquarters was an appeal to workingmen "to emancipate labor and eradicate all international and national strife."[4] The following year witnessed

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[1] Henry A. James: Communism in America, New York, 1878, p. 24.

[2] It is necessary for brevity's sake to assume that the reader is already familiar with the history of the old International. A description of it is given in Ely's "French and German Socialism," chapter X.

[3] James, Ibid.

[4] The authority for this statement is found in an interview which a New York *Herald* reporter held with Mr. Leopold Jonas, a leading New York

the disasters in the industrial and commercial world to which reference has already been made, and the distress consequent thereupon was an important aid to the socialists in their propaganda.

There have been several changes in party organization and name since then, and National Conventions or Congresses have met from time to time. Their dates and places of meeting have been Philadelphia, 1874, Pittsburg, 1876, Newark, 1877, Allegheny City, 1880, Baltimore, 1883, and Pittsburgh, 1883. The name Socialistic Labor Party was adopted in 1877 at the Newark Convention. In 1883 the split between the moderates and extremists had become definite, and the former held their Congress in Pittsburgh, and the latter in Baltimore.[1]

The separation between the two bodies of socialists is a matter of interest. A similar separation took place in the Congress of the International at the Hague in 1872, between the followers of Marx, who represented in many respects the spirit and methods of the present Socialistic Labor Party, and those of Bakounine, who were anarchists like the members of the existing International in the United States. It is altogether probable that the feeling of animosity between the adherents of the two directions was present in New York from the beginning of the operations of the "Council" transferred in the same year to that city. But for some time they succeeded in working together, and hopes of a permanent Union were certainly not abandoned until after the advent of John Most on our shores in December, 1882. Most has proved a firebrand among American socialists, and was early denounced by those who felt repelled by his mad expressions of violence, and saw that he was doing their cause much harm; but it was still impossible to pass a formal vote repu-

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member of the Socialistic Labor Party. V. "Our American Socialists," New York *Herald*, May 19, 1884.

[1] New York *Herald*, Ibid.

diating him in the Congress of the Socialistic Labor Party in Baltimore in 1883. During the following year the San Francisco *Truth* and others still thought it worth while to advocate a union of all discontented proletarians, but acrimony and bitterness between representatives of opposing views continued to increase, and when the terrible outrages in London, in January of the present year, were condemned in terms of severity by the Socialistic Labor Party and applauded by the Internationalists, all hopes of united action vanished, and the animosity between the two became so intense that they came to blows in a meeting called in New York by the moderates to protest against the recent use of dynamite. Shortly after that there was a disturbance between the Internationalists and the members of the Socialistic Labor Party in a public meeting in Baltimore, and the warfare between the two factions is as bitter as between them and the Capitalistic Society which they seek to overthrow.

III.

The International Working People's Association.

The Internationalists at their Congress in Pittsburgh adopted unanimously a manifesto or declaration of motives and principles, often called the Pittsburgh Proclamation, in which they describe their ultimate goal in these words:

"What we would achieve is, therefore, plainly and simply:

"*First.*—Destruction of the existing class rule, by all means, *i. e.*, by energetic, relentless, revolutionary and international action.

"*Second.*—Establishment of a free society based upon co-operative organization of production.

"*Third.*—Free exchange of equivalent products by and between the productive organizations without commerce and profit-mongery.

"*Fourth.*—Organization of education on a secular, scientific and equal basis for both sexes.

"*Fifth.*—Equal rights for all without distinction to sex or race.

"*Sixth.*—Regulation of all public affairs by free contracts between the autonomous (independent) communes and associations, resting on a federalistic basis."[1]

Here we have in a few words the dream of the Anarchists, as these Internationalists call themselves, and it has been well characterized by Mr. Hyndman, as "individualism gone mad." It may be well to explain the ideas contained in this program under the two heads, political and economic.

First.—Their political philosophy is pure negation or nihilism in the strict sense of the word. It is the doctrine of *laissez-faire* carried to its logical outcome. What say our advocates of the "let-alone" policy about government and the state? They assure us that the less government the better, and that the state is but a necessary evil at best. To this the anarchists reply: Very true, but why should we tolerate the least needless evil? We hold that government of any kind is worse than useless, and that the state is but another name for oppression. We recognize no right of any individual or of any body of men to interfere with us, and we will have neither state nor laws. We are prepared to fight for liberty without restraint or control. Our ideal is anarchy. It is a holy cause, and to it we have devoted our lives.

Each member of society is in this new world to be absolutely free. As gregarious animals, and for the sake of voluntary coöperation, men will naturally form themselves into independent self-governing communes or townships, into which the whole of mankind will be ultimately resolved. These communes will for the sake of convenience be grouped

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[1] Free contract, it is to be observed, in the language of the Internationalists, means not freedom of contract in the present sense, but a contract which may be fulfilled or not, according to the good pleasure of the parties concerned. The one who breaks it, suffers no legal penalty.

loosely into federations, which, however, will have no authority whatever. While each commune is at liberty to sever its connection with the common body at pleasure, it is thought that the social nature of man will be a sufficient adhesive force to hold them together. All regulation and control centre in free and voluntary and self-enforced contract.

Second.—The economic ideas of the Internationalists as expressed in their résumé of their aims, are "coöperative organization of production," and "free exchange of equivalent products by and between the productive organizations without commerce and profit-bringing." But when developed, these brief propositions imply several radical demands, viz., "free lands," "free tools" and "free money." Rent falls away, as there is no authority to enforce its payment, and laborers lay hold of and use freely the means of production (capital), as anarchism recognizes no power to prevent this. Possession takes the place of property and possession lasts only so long as means of production possessed are actually used by their possessor. This ends at once "capitalism" and "landlordism," and leaves room only for united labor. Workingmen, it is supposed, will naturally group themselves into "productive organizations," where each one will work as long as he pleases and receive "labor-money," or credits indicating the length of labor-time. If our present terms should be retained, a dollar might represent the toil of one hundred minutes, and one dollar would always equal another. "Socialism advocates that the time and service of one man is equal ultimately to the time and service of any other man; hence, the nearest approach to exact justice is equal pay for equal time and expenditure of equal energy."[1]

[1] From "Socialism" by Starkweather and Wilson in Lovell's Library, No. 461, p. 29, cf. also pp. 78–80. This doctrine of equality seems to be unanimously accepted by the Anarchists, though it is not maintained by all socialists, and it must in fairness be acknowledged that it forms no necessary part of socialism.

Commerce is replaced by a common store-house to which all social products are carried, and where their value is determined by labor-time. A bushel of potatoes might be quoted at twenty-five minutes, for example, in which case any purchaser presenting a note for one hundred minutes would receive his potatoes, and seventy-five minutes in change.

Thus the laborer receives the full value of all he produces, and profits, called legalized robbery or unpaid labor, are abolished. It is supposed that a few hours a day—one writer mentions three—would suffice to produce all the goods needed by society. In the words of the Pittsburgh Proclamation: "This order of things allows production to regulate itself according to the demands of the whole people, so that nobody need work more than a few hours a day, and that all nevertheless can satisfy their needs. Hereby time and opportunity are given for opening to the people the way to the highest civilization; the privileges of higher intelligence fall with the privileges of wealth and birth."

Another point worthy of notice is the preponderating influence the Internationalists, even more than other socialists, give to external circumstances in the formation of character. If their attention is called to the crime and wrong-doing in present society as a proof of the need of a repressive authority, they reply that it will be quite different in a condition of anarchy because our existing institutions are the cause of the evil which afflicts us now; in particular do they necessitate the poverty of the many, and poverty is the chief source of what we call sin. "Socialism," say Starkweather and Wilson, in their pamphlet,[1] "would abolish poverty by preventing it, by removing its causes. As poverty is the cause directly or indirectly of all crime, therefore, by the abolition of poverty, crime would become almost unknown, and with the crime would disappear all the lice, leeches, vampires and vermin that fatten on its filth; such as the entire legal fraternity,

[1] L. c., p. 30.

soldiers, police, spies, judges, sheriffs, priests, preachers, quack doctors, etc., etc." Nevertheless, even an Anarchist is forced to admit the possibility of an occasional crime against individual or society, and in such case has nothing better to offer than the unrestrained exercise of brute force. As they now advocate the extermination of opponents and admire mob law, there is nothing left for them save the destruction of those whom they consider their enemies in any and every form of society.

The economic ideas of the Anarchists are so vague that it is difficult to describe them more precisely, and it is the less necessary to do so from the fact that the chief part of their program is a plea for action, for revolution; for destruction, rather than construction, as they hold that the former must precede the latter.

It is to be noticed that they attempt to realize their political ideal as far as possible in their own plan of organization. The International is composed of independent "groups," with no central authority or executive, both of which expressions many of them detest. The only bond of union between them is found is their common ideas, in their press, their congresses and local organizations, and a Bureau of Information, formed by the Chicago Groups, which appears to be the nearest approach to a centre of life and activity.

The manifesto of the Internationalists has been mentioned and quotations from it given. It is, however, necessary to consult their press to obtain a more complete survey of their views. They have several newspapers of which the following are the most prominent: *die Freiheit*, Most's New York weekly, now in its seventh year; *der Vorbote*, a weekly, *die Fackel*, a Sunday paper, and *die Chicagoer Arbeiterzeitung*, a daily, all three published by the Socialistic Publishing Company, of Chicago. The *Vorbote*, in its twelfth year, is the oldest of their organs. The *Alarm*, a weekly, in its first year, is published at the same place, and is edited by A. R. Parsons. Its purpose is to disseminate the most extreme

revolutionary teachings among English-speaking laborers. *Liberty*, now in its third volume, edited by Benj. R. Tucker, hails from Boston, and is likewise a representative of the revolution and complete anarchy. Kansas sends us *Lucifer, the Light-Bearer*, a journal of like tendencies. *Truth, a Journal for the Poor*, a San Francisco weekly, was beginning its third year when the first edition of this monograph was prepared for the *Christian Union*. It changed its form last July and appeared as a monthly, and finally ceased to appear with the December number, having made over its "good will" to the *Enquirer*, of Denver, Colorado, which now takes its place. These journals supply abundant evidence touching the doctrines of the Anarchist in respect to the family and religion, and it is these doctrines which are now to engage our attention.

The Internationalists attack both religion and the family, and that with what may be considered practical unanimity. While it is not right to connect this attitude with socialism *per se*, the fairest-minded person cannot blame a writer for holding up to condemnation any concrete, actually existing party which wages war against all that we consider most sacred, and which seeks to abolish those institutions which we hold to be of inestimable value, both to the individual and to society.

Religion and the family are not only attacked by the extremists, but the onslaught on them is made in language of unparalleled coarseness and shocking impiety. Here are two quotations from *Truth*, which are indicative of the general tone of the paper: "Heaven is a dream invented by robbers to distract the attention of the victims of their brigandage." "When the laboring men understand that the heaven which they are promised hereafter is but a mirage, they will knock at the door of the wealthy robber with a musket in hand and demand their share of the goods of this life, now." *Freiheit*, the most blasphemous of all socialistic papers, concludes an article on the "Fruits of the Belief in God" with the exclamation: "Religion, authority and state are all

carved out of the same piece of wood—to the devil with them all!" The *Vorbote* speaks of religion as destructive poison. The Pittsburgh manifesto—unanimously adopted, be it remembered—contains this sentence: "The church finally seeks to make complete idiots out of the mass, and to make them forego the paradise on earth by promising a fictitious heaven."

There appears to be scarcely the same unanimity concerning the family. It was not directly condemned in the Pittsburgh manifesto, nor does *Truth* say much about it. But there is no doubt about the general policy of their journals. They sneer incessantly at the "sacredness of the family," and dwell with pleasure on every vile scandal which is noticed by the "capitalistic press." Especial attention is given to divorces to show that the family institution is already undermined, and they are thorough-going sceptics regarding the morality of the relations between the sexes in bourgeois society. The *Vorbote* for May 12, 1883, contains an article on the Sacredness of the Family, from which these sentences are extracted:

"In capitalistic society, marriage has long become a pure financial operation, and the possessing classes long ago established community of wives, and, indeed, the nastiest which is conceivable. . . . They take a special pleasure in seducing one another's wives. . . . A marriage is only so long moral, as it rests upon the free inclination of man and wife." A poem which appeared in *Truth*, January 26, 1884, is in the same spirit. It is entitled

"MARRIAGE

UNDER THE COMPETITIVE SYSTEM.

"Oh, wilt thou take this form so spare,
This powdered face and frizzled hair—
To be thy wedded wife;
And keep her free from labor vile,
Lest she her dainty fingers soil—
And dress her up in gayest style,
As long as thou hast life?"
"I will."

"And wilt thou take these stocks and bonds,
This brown-stone front, these diamonds
To be thy husband dear?
And wilt thou in this carriage ride,
And o'er his lordly home preside,
And be divorced while yet a bride,
Or ere a single year?"
"I will."

"Then I pronounce you man and wife;
And with what I've together joined,
The next best man may run away,
Whenever he a chance can find."

Most's *Freiheit* habitually attains the superlative of coarseness and vileness in its attacks on the family. It objects to the family on principle because it is the State in miniature, because it existed before the State, and furnished a model for it with all its evils and perversities. *Freiheit* advocates a new genealogy traced from mothers, whose names, and not that of the fathers, descend to the children, since it is never certain who the father is. State up-bringing of children is likewise favored in the *Freiheit*, in order that the old family may completely abandon the field to free love.

We have now a complete picture of their ideals: common property; socialistic production and distribution; the grossest materialism, for their God is their belly; free love; in all social arrangements, perfect individualism, or in other words, anarchy. Negatively expressed; away with private property! away with all authority! away with the state! away with the family! away with religion!

IV.

The Propaganda of Deed and the Educational Campaign.

Our attention must now be devoted to an inquiry into the means by which the Anarchists propose to attain their ends.

Having abandoned all faith in the ballot, their present method is to sow the seeds of discontent, bitterness and hate in the minds of the laborers as a preparation for that violence and revolution which are to inaugurate a new era of peace and good-will among men. The following quotation from their manifesto makes this sufficiently plain.

"Agitation for the purpose of organization; organization for the purpose of rebellion. In these few words the ways are marked which the workers must take if they want to be rid of their chains, as the condition of things is the same in all countries of so-called 'civilization.' . . . We could show by scores of illustrations that all attempts in the past to reform this monstrous system by peaceable means, such as the ballot, have been futile, and all such efforts in the future must necessarily be so for the following reasons:

"The political institutions of the time are the agency of the property class; their mission is the upholding of the privileges of their masters; any reform in your own behalf would curtail their privileges. To this they will not and cannot consent, for it would be suicidal to themselves. . . .

"There remains but one recourse—force! Our forefathers have not only told us that against despots force is justifiable, because it is the only means, but they themselves have set the immemorial example."

In their résumé, they express their purpose in these words: "Destruction of the existing class rule, by all means, *i. e.*, by energetic, relentless, revolutionary and international action."

The newspapers of the Internationalists proclaim a similar doctrine, of which the following specimen quotation from *Truth* may serve as an example:

"It is beyond doubt that if universal suffrage had been a weapon capable of emancipating people, our tyrants would have suppressed it long ago.

"Here in America, it is proved to be but the instrument used by our masters to prevent any reforms ever being

accomplished. The Republican party is run by robbers and in the interest of robbery. The Democratic party is run by thieves and in the interest of thievery. Therefore vote no more."

Further, the International Labor Association which met in London in July, 1881, declared its hostility to all political action, and their resolution on this subject was printed in Most's *Freiheit* with approval. It is also in keeping with Most's recent advice to laborers in his speeches.

The fact is, the Internationalists put their faith in dynamite and other explosives. Dynamite, a cheap product and the poor man's natural weapon, is glorified and songs are sung in its praise. "Hurrah for science! hurrah for dynamite, the power which in our hands shall make an end of tyranny," is the sentiment of a poem entitled "Nihilisten" published in the *Vorbote*. It is explained that powder and musket broke the back of feudalism and made way for the rule of the bourgeoisie. Fire-arms are, however, too expensive for the proletariat, but just as the proletariat was awaking to a consciousness of its position, in the very nick of time, dynamite was discovered. Consequently such squibs as these may be found in the San Francisco *Truth*: "*Truth* is five cents a copy and dynamite forty cents a pound." "Every trade-union and assembly ought to pick its best men and form them into classes for the study of chemistry."

But we have not yet come to the worst; for there is no conceivable crime or form of violence against individuals or masses which the Internationalists as a party do not endorse, provided these crimes and acts of violence aid them to accomplish their ends. Hypocrisy, fraud, deceit, adultery, robbery and murder are held sacred, when beneficial to the revolution. Not every individual member certainly maintains this view, but it is upheld unreservedly by the extremists and more or less explicitly by their leaders and journals. The following quotations from their newspapers supply abundant proof.

From *Truth*: "War to the palace, peace to the cottage, death to luxurious idleness!"

"We have no moment to waste. Arm! I say, to the teeth! for the Revolution is upon you!"[1]

An attack on Mr. Abram S. Hewitt concludes with these words: "Mr. Hewitt ought to be turned over to some recruit, whose services will be paid for out of Patrick Ford's emergency fund."

The following characteristic sentiments, a distinct revival of Babouvism, the communistic climax of the French Revolution, are taken from one of their papers: "Plundered as we are by the proprietor who limits our air and light, we must come forth from the cellars and attics in which our families struggle for existence and establish ourselves in those splendid buildings which have been raised at the cost of so much toil and suffering, and in those spacious apartments in which there is an abundance of pure air, and where the sunlight will throw its life-giving radiance upon our little ones. We must take possession of the great warehouses and stores in which the rich man now finds the means of gratifying his caprices, and lay our hands for the common good, on the enormous quantity of products of all kinds necessary for our nourishment and for our protection from the weather."

Assassination of members of the ruling classes is thus spoken of in one of their journals. "It does not at all appear so terrible to us when laborers occasionally raise their arm and lay low one and another of this clique of robbers and murderers."[2] In another issue of the same paper a writer describes the circumstances which would justify the assassination of men like Gould or Vanderbilt:[3] "If at present a man should kill Jay Gould or Vanderbilt without special occasion, this would produce a very unfavorable impression, and would be of no use and would not satisfy the popular sense of justice.

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[1] *Truth*, November 17, 1883.
[2] *Vorbote*, d. 16 January, 1881.
[3] 14 April.

"If on the contrary a railroad accident should again happen in consequence of the clearly proved criminal greed of these monopolists, and many men should be killed and crippled thereby, and the jury should as usual pronounce the real criminals, Vanderbilt or Gould, 'not guilty,' and the husband or father of one of the killed or one of the crippled should arise and obtain justice for himself in the massacre of these monsters (*diese Scheusale*), a cry of joy would resound through the whole land, and no jury would sentence the righteous executioner (*Vollstrecker*). . . . Whether one uses dynamite, a revolver or a rope is a matter of indifference."

The *Fackel*, German for Torch, is a most dangerous-appearing sheet, inciting by its very appearance to incendiarism. The letters of the title *die Fackel* are in flames, and are printed in a background of fire and smoke. It is plainly not the torch which gives light, but the torch which kindles a general conflagration, as is seen in the accompanying illustration.



Lynching is advocated by these journals, and admired as a form of popular justice. One writer expresses[1] his opinion in this manner: "Judge Lynch is the best and cheapest court in the land, and when the sense of justice in the people once awakes, may the judge hold court in every place, for nowhere is there a lack of unhanged honorables and prominent sharps."

As one hundred years ago in France, so now, revolution has become a religion. "Our religion, the grandest religion that ever suffered for supporters and propagandists." There are

[1] In *die Freiheit.*

those ready to die for it as there were in the great French Revolution—an eternal witness to the need of the human mind for some form of religion, and a proof that if a worthy one is not accepted, an unworthy one is sure sooner or later to force its entrance into the longing heart and find there a capability of devotion, often grand. The terrible condition of a soul which has thus elevated the trinity, envy, hatred and destruction, to the position of a god to be served, cannot better be brought home to the reader than by means of a quotation from the *Freiheit*. The article from which it is extracted is called "Revolutionary Principles," and appeared in the issue for March 18, 1883:

"The revolutionist has no personal interest, concerns, feelings or inclinations, no property, not even a name. Everything in him is swallowed up by the one exclusive interest, by the one single thought, by the one single passion—the revolution.

"In the depths of his nature, not only in words, but also in deeds, has he fully broken with the civil order, with the laws currently recognized in this world, with customs, morals and usages. He is the irreconcilable enemy of this world and if he continues to live in it, it only happens in order to destroy it with the greater certainty.

"The revolutionist despises all dogmas and renounces the science of the present world, which he leaves for future generations. He knows only one science, namely, destruction. For this purpose and for this alone he studies mechanics, physics, chemistry and possibly also medicine. For this purpose he studies day and night living science—men, characters, relations, as well as all conditions of the present social order in all its ramifications.

"He despises public opinion. He despises and hates the present social morality in all its leadings and in all its manifestations, for him everything is moral which proves the triumph of the revolution; everything immoral and criminal which hinders it. Severe against himself, he must likewise be

severe against others. Every affection, the effeminating sensations of relationship, friendship, love, gratitude, all must be smothered in time by the one cold passion, the revolutionary work. For him there is only one pleasure, one comfort, one recompense; the success of the revolution. Day and night may he cherish only one thought, only one purpose, viz., inexorable destruction. While he pursues this purpose without rest and in cold blood, he must be ready to die, and equally ready to kill every one with his own hands, who hinders him in the attainment of this purpose. . . . .

"For the sake of unrelenting destruction, the revolutionist can, and indeed often must live in the midst of society, and appear to be different from what he really is. The revolutionist must gain access to the higher circles, the church, the palace. . . . This entire lewd official society is divided into several categories. The first consists of those who are forthwith to be consecrated to Death"—and much more like this.

The most violent society in America has recently been formed, and has issued a proclamation. It is called the Black Hand, and its purpose is immediate violence. A few sentences from the proclamation[1] will prove instructive:

"THE BLACK HAND.

"A Proclamation Issued by an American Branch.

"Be up and Doing.

"Fellow workmen: The social crisis is pointing in all countries of modern civilization towards a fast approaching crisis. . . . Only through daring will we be victorious. . . .

"The masses will only be with us when they trust us, and they will trust us if they have proofs of our power and ability.

"We will give them.

"This involves the necessity of revolutionary skirmishes, of daring deeds, of those acts which are the forerunners of every

[1] Published in *Truth*, January 26, 1884.

great revolution. This is the name of our International Organization—the Black Hand.

"Proletarians! . . . We appeal herewith to all our associates in regard to the propaganda of deed in every form. . . .

"War to the Knife!

"The Executive of the Black Hand."

The power of the revolutionary and violent socialists in countries where they exist in numbers, is a kind of *imperium in imperio*, whose leaders regard reverence for nationality as worthy to rank with old wives' superstitions, and consider patriotism a criminal weakness unworthy of a free man. This socialistic *imperium* is therefore thoroughly cosmopolitan and one and indivisible in all parts of the world, but two or more of its chief seats are evidently in America: for New York, and still more Chicago, seem entitled to such a position.

The Internationalists look at their power as an *imperium*, loyalty to which is worthy of the highest praise, and they confer distinguished honor upon all those who suffer in their cause. Terms are used whose aim is to pervert the mind and blind the eyes of sympathizers to the true character of their deeds. The leaders issue their decrees, couched in language proper to the civil authorities of the State, and pass "sentence of death" upon offenders. Assassination is called "execution," while the death penalty, when inflicted upon one of their members in due course of law, is called judicial murder. Thus the fulfilment of the mandates of anarchistic committees appears as righteous to those entrusted therewith, as it does to a federal marshal to assist in the enforcement of the laws of the United States. The power in New York, for example, sends instructions to the socialists of Vienna in 1883, admonishing them to pass over to the propaganda of deed and exterminate the Royal House of Austria and all who uphold them,[1] and when their "comrades," Stellmacher and

[1] V. *die Freiheit*, d. 24 February, 1883.

others, murder officers of the Viennese police, a grand demonstration is held in Irving Hall in New York, to glorify these heroes of crime.[1] The mind of man has conceived no outpourings of cruel vindictiveness and malignant hate which surpass the utterance of these mad souls, which one is tempted to believe are the spirits of the lost returned to torment the earth for sin. Most tells the faithful followers that what has happened in Austria ought not be called murder, because "murder is the killing of a human being, and I have never heard that a policeman was a human being." Then he goes on to say that spies and all members of the police ought to be exterminated, one after another, they all long ago having been declared outlaws by every decent man. "With shouts of joy," continues he, "does the proletariat learn of such deeds of vengeance. The propaganda of deed excites incalculable enthusiasm. When Hödel and Nobiling shot at the accursed Lehmann,[2] there were indeed those among the laborers who did not then understand those brave deeds, but to-day the German proletariat has only one objection to raise to them: viz., that better aim was not taken. . . . As for America, the people of that land will learn one day that an end is to be made of the mockery of the ballot, and that the best thing one can do with such fellows as Jay Gould and Vanderbilt is to hang them on the nearest lamp-post." Then a series of resolutions were unanimously adopted, expressing sympathy with the aims of the Austrian revolutionists, approving of their means and urging them to spare no life which stood in the way of the extinguishment of the aristocracy and bourgeoisie, in particular to destroy the emperor. The comrades were told that they must make themselves more terrible than terror itself. The resolutions closed with these words: "Brothers! Your affair is that of the oppressed against their tyrants. It is not the affair of Austria. It is the most sacred affair of the people of all lands.

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[1] V. *die Freiheit*, d. 16 February, 1884.

[2] *I. e.*, the Emperor William.

"Comrades, we applaud most heartily your acts and your tactics. . . . Kill, destroy, annihilate your aristocracy and bourgeoisie to the last man.

"In dealing with this canaille show neither love nor pity. . . . Vive la révolution sociale."

At the door a collection was taken up to form a "revolutionary action-fund." The proceeds were stated to be $36.

When the wretched August Reinsdorf was executed for an attempt on the life of the German Emperor, Most's *Freiheit* appeared with a heavy black border about the first page, on which was an engraving of this "martyr," accompanied by a biographical notice in which he is raised to the rank of an immortal hero and a devoted saint. "One of our noblest and best is no more. In the prison yard at Halle under the murderous sword of the criminal Hohenzollern band, on the 7th of February, August Reinsdorf ended a life full of battle and of self-sacrificing courage, as a martyr to the great revolution. All who knew the comrade personally, know what this loss signifies. Every one who is able to value manly worth and self-sacrifice, needs only to know how Reinsdorf conducted himself before the court, in order to possess the highest regard for him beyond the grave. As for us, we have taken Reinsdorf into our heart and there he will remain for all time." Language of this kind is continued through three columns, and it is mentioned with pride that Reinsdorf had been connected with the *Freiheit* from the beginning of its existence.[1]

It might be supposed that these Anarchists would have been stricken with remorse when they heard the news of the horrible dynamite explosions in London in January of this year, but their consciences had already been seared as with a hot iron, and the editor of *Liberty* had the audacity to write such words as these: "It is glorious news that comes to us from England; sad enough if it were unnecessary, sad enough that

[1] *Die Freiheit*, 14 February, 1885.

it should be necessary, but having been made necessary by its victims, none the less joyful and glorious. The dynamite policy is now definitely adopted in England and must be vigorously pushed until it has produced the desired effect of abolishing all the repressive legislation that denies the freedom of agitation and discussion, which alone can result in the final settlement of social questions and make the revolution a fixed fact. . . . An explosion that should blow every atom of the English Parliamentary Buildings into the Thames River ought to be as gratifying to every lover of liberty as the fall of the Bastille in 1789. . . . Why, by endangering the lives of innocent people, alienate the sympathy of many who would appreciate and applaud a prompt visitation of death upon a Gladstone immediately after the passage of a Coercion Act? . . . How much better and wiser and more effective in this respect the course of the Russian and German Terrorists! Witness, for instance, the telling promptness with which the police commissioner Rumpff was found dead on his doorstep the other day just after he had accomplished the death sentence of the brave Reinsdorf and his anarchistic comrades? I commend this relentless directness to the Irish dynamiters."[1]

While the European practices of the revolutionists have not as yet been adopted in America, they themselves claim that our respite is a short one, since they are waiting for an opportune moment to begin the tactics of violence, and the favorable time is expected in a very near future.[2]

While one method of preparing for the revolution is, as is seen, the *propaganda of deed*, as the use of dynamite and personal violence to individuals are euphemistically termed, another is the "Educational Campaign" which accompanies it and which some even of the Anarchists think ought to precede it, though the tendency now is strongly in the direction of immediate action.

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[1] *Liberty*, January 31, 1885.

[2] V. *die Freiheit*, d. 18 February, 1884.

In the last days of the newspaper *Truth*, its incessant cry was the "Educational Campaign" which was considered the pressing need of the moment. It was urged that tracts be published, existing journals encouraged, new ones founded and teachers sent out into the four quarters of the earth to spread the doctrines of socialism far and near. Instructions to agitators were published, of which the following are samples:

"Bring right home to him [the wage-worker] the question of his servitude and poverty. . . .

"Create disgust with, and rebellion against existing usages, for success lies through general dissatisfaction.

"The masses must have something to hate. Direct their hatred to this condition."

These instructions and others like them are now being carried out by the propagandists of anarchy. "Gronps" are formed to which text-books constituting a course of study in socialism are recommended. It is urged that members of existing groups continue the work by formation of new gronps of seven or eight or more, and that these latter in similar manner carry forward the movement which thus becomes self-propagating.

The ingenuity displayed in nourishing hate is remarkable. A number of *Truth* published about a year ago contained the bill of fare of a rich man's dinner, which laborers are advised to cut out and paste on their "old tin coffee-pot at home." Long and apparently accurate lists of rich men in the chief cities of the United States are published with headings like this:[1]

"DOLLARS.

"More men in the United States who have robbed us.

"THE GRAND LARCENISTS OF AMERICA.

"THE PEOPLE WHO HAVE LEGALLY STOLEN THE UNPAID WAGES OF THE WORKERS.

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[1] *Truth*, January 16, 1884.

"[*Official.*]

"Headquarters Division Executive, Pacific Coast Division, International Workmen's Association, San Francisco. [Supplement to Circular No. 10, Series B., 1883]."

This also marks out the rich men for attention in the upheaval for which they are preparing. Perhaps they will be turned over to "recruits" to be paid out of emergency funds now being collected, unless, indeed, these should in the meanwhile mysteriously disappear; which fate, it is said, has ere this overtaken certain Irish emergency funds.

A poem in "John Swinton's Paper," October 28, 1883, has likewise for its aim the arousal of envy and hate. It is entitled, "Wm. H. Vanderbillion, the song to be sung in the Reign of the Billionaire. Song of the Billionaire."

The following are three stanzas:

"I'm a bloater, I'm a bloater,
By my millions all are dazed;
I'm a bloater, I'm a bloater,
On the 'water' I have raised!

. . . . . .

I'm a-drumming, I'm a-drumming
Up the millions, right or wrong;
I'm a-coming, yes, a-coming
With a thousand millions strong!

. . . . . .

I'm a-nursing, fondly nursing
Well my wealth in coffers crammed;
Public 's cursing, loudly cursing,
But 'the public may be damned!'"

V.

The Socialistic Labor Party.

The "Manifesto of the Congress of the Socialistic Labor Party," held at Baltimore in December, 1883, contained these principles which had been unanimously adopted as the result,

both of their own researches and of the studies of their brothers in Europe:

"Labor being the creator of all wealth and civilization, it rightfully follows that those who labor and create all wealth should enjoy the full result of their toil. Therefore we declare:

"That a just and equitable distribution of the fruits of labor is utterly impossible under the present system of society. This fact is abundantly illustrated by the deplorable condition of the working classes, which are in a state of destitution and degrading dependence in the midst of their own productions. While the hardest and most disagreeable work brings to the worker only the bare necessaries of life, others who labor not, riot in labor's production. We furthermore declare:

"That the present industrial system of competition, based on rent, profit-taking and interest, causes and intensifies this inequality, concentrating into the hands of a few, all means of production, distribution and the results of labor, thus creating gigantic monopolies dangerous to the people's liberties; and we further declare:

"That these monster monopolies and these consequent extremes of wealth and poverty supported by class legislation, are subversive of all democracy, injurious to the national interests and destructive of truth and morality. This state of affairs, continued and upheld by the ruling political parties, is against the welfare of the people.

"To abolish this system, with a view to establish coöperative production, and to secure equitable distribution, we demand that the resources of life, namely land, the means of production, public transportation and exchange, become as fast as practicable the property of the whole people."

The form of society which the members of the Socialistic Labor Party desire is quite different from the voluntary association of the Anarchists, since they are unable to understand how there can be social ownership of capital, rational produc-

tion in the interest of all, and an equitable distribution of products without control or regulation. Consequently they are not opposed to the state in itself (*an sich*), but wish to substitute the socialistic state, the people's state, for the present state-form. Combatting anarchy and individualism, they are in the strict sense of the term socialists. While they believe in the state, they do not think that national boundaries should constitute barriers to combined action, either now or hereafter, but hold that the interests of the mass of humanity are one in all lands of civilization. The moderates are as strictly internationalists in theory and feeling as the members of the party bearing that name, and, in fact, more nearly resemble the old International of Marx in their organization.

The Socialistic Labor Party is composed of local sections, of which there may be only one in any city, although this one may be subdivided into "branches." The head of the party is a "National Executive Committee," which is, however, in some respects subject to a Board of Supervisors. The final decision of conflicts, of course, rests with the members of the party, who manifest their wishes by their votes. A wide sphere of action is also reserved for their conventions or congresses which meet every two or three years.

In opposition to the "reds," the "blues" enforce the necessity of unity in organization as the indispensable preliminary of harmonious activity. The workmen isolated, it is held, can accomplish nothing, but combined in a closely united whole they can carry everything before them and reconstruct the world. "Fellow-workmen," thus the laborers are addressed in their Manifesto, "you must rally in one great invincible phalanx, if you hope to gain a foot of ground."

It is to be noticed that this party of socialists is also a political party, which has in times past taken an active part in politics, in a few cases electing their candidates, and which hopes for greater success in the future, though only a few of them indulge the hope that their reforms can be accomplished peaceably by the ballot. But they advise participation in

politics because they regard it as an educational aid, bringing their principles before the people and thus becoming a useful means of propaganda. It is also considered helpful in securing an efficient organization of their own party. "Universal suffrage must be regarded as a weapon in battle, not as a means of salvation."[1] Again, the ballot is the best visible evidence of strength, and the growth which it registers must encourage adherents to renewed efforts for an extension of their principles. They appear to hope further that it may assist them in securing certain reforms not incompatible with existing economic institutions. But this is not all. As the laborers gain political power, they will attempt to use it in their own behalf, and the ruling clas-es, it is thought, not being able to consent to this, will rebel and bring on the revolution, which is expected in the end.

The difference between the two parties in respect to revolution, then, is this: The Internationalists desire to begin the revolution and do not shrink from an active initiative in deeds of violence. This the moderates regard as madness, holding that a revolution comes in the natural course of evolution and cannot be "made." The Socialistic Labor Party believes in peaceful agitation and lawful means in behalf of their principles until their enemies force the struggle upon them; as their manifesto puts it:

"We must expect that our enemies—when they see our power increasing in a peaceful and legal way and approaching victory—will on their part become rebels, just as once did the slave-holders, and that then the time will come for the cause of labor, when that old prime lever of all revolutions, FORCE, . . . must be applied to, in order to place the working masses in control of the State, which then for the first time will be the representative, not of a few privileged classes, but of all society. . . . We surely do not participate in the folly of those men, who consider dynamite bombs the best

[1] *Der Socialist*, January 24, 1885.

means of agitation to produce the greatest revolution that transpired in the social life of mankind. We know very well that a revolution in the brains of men and the economical conditions of society must precede, ere a lasting success can be obtained in the interest of the working classes."

The doctrine of the Socialistic Labor Party is not that it is necessary to secure unanimity of opinion, or even the adherence of the majority before their principles can be established, but they think it essential that a large leaven of socialism and a very general understanding of their principles should precede the successful revolution. It is believed that uprisings will occur without their intervention, and these they hope to be able to guide. They desire to raise up leaders for the proletariat who may seize on the fruits of upheavals in society, for they argue that after the masses have hitherto accomplished revolutions, the lack of intelligent, determined leaders with definite aims has enabled others to step in and enjoy the advantages purchased by the blood of the toiling many. Thus the bourgeoisie captured the French Revolution. They do not mean that this shall occur again.

The moderates expect the laborers in the one way or the other to gain the political power of the state, which they will then use to reconstruct the state, both politically and economically, in the interest of the entire people. The state, they hold, is now a capitalistic state, because the small but well-organized class of capitalists virtually rule the large but divided class of wage-workers, who constitute four-fifths of the population, and because they do this in such manner as to promote their own welfare at the expense of the masses. The struggle for power hitherto, it is maintained, has been a class-struggle, and the result has always been the triumph of a class in a class-state. The conflict is still between classes, the only two great remaining classes, namely—between capitalists and laborers. This has been the course of development up to the present time, and there is no reason to quarrel with it. It were as wise to get angry with the laws of motion.

But the evolution of preceding ages is soon to terminate in a higher product than the world has yet seen, for when the masses obtain power there will be constituted for the first time not a class-state, not a form of society designed to benefit any groups of individuals, but the true people's state, the folk-state, designed to elevate all alike.

It is maintained that democracy, to be real, must be economic as well as political, and it is this kind of democracy which it is desired to establish. An inconsistency is discovered in the democracies of the present age which grant equality in political affairs without any attempt to realize justice in distribution of products. But this logical contradiction is regarded as even worse than it appears at first sight, from the fact that economic servitude renders political equality a deceit, a snare for the unwary, since those who control the means of life control the votes. Thus a disastrous climax is reached, the equality of all men is proclaimed, and then the hopes raised are frustrated by the restriction of this equality to the political sphere of action; but it does not rest with this curtailment, as indirect means are soon discerned for robbing the people of even political equality. Democracy thus becomes a *simulacrum*.

It is not necessary to add much to what has already been said in explanation of their economic ideas, which indeed are not peculiar. These socialists believe in a universal system of coöperation, extending itself over the entire civilized world and embracing doubtless in the end those countries which are not now so far advanced as to be included within the regions of civilization. The means of production, the basis of coöperative labor, are to be the property of the people as a whole, like the post-office in the United States now, and railroads and telegraph lines in other lands, and the products for consumption are to be distributed "equitably," which can be differently interpreted according to one's notions of justice. Some would doubtless say "according to deeds," which is socialism; others "according to needs," which might better be called communism.

The Socialistic Labor Party, composed of abler and better educated men, is far more decent than the International. Its adherents do not indulge to the same extent in the so-called "strong phrases" of the Internationalists, which mean vulgar black-guardism, such as would cause a Billingsgate fish-woman to hang her head in envious shame. Again, they do not take such an extreme attitude in regard to religion and the family, neither of which is mentioned in their Manifesto, though the *Sozialist*, their official organ, has rejected all supernatural religion. The abandonment of all hope of a union with the extremists has had a most salutary effect upon the moderates. It is likely that before the separation became final, the better men of the party tolerated much of which they must inwardly have disapproved, in order not to estrange their more violent brethren.

The adherents of the Socialistic Labor Party do not regard the present state as so utterly bad that it is not worth while to advocate specific reforms at once, among which their manifesto mentions the following: "Bureaus of Labor Statistics, Reduction of the Hours of Labor, Abolition of Contract Convict Labor, Employers' Liability Law, Prohibition of Child Labor, Compulsory Education, Factory, Mine and Workshop Inspection, Sanitary Inspection of Food and Dwellings, and Payment of Wages in Cash." They also frequently demand the referendum as in Switzerland, and such arrangements as are calculated to give the people an initiative in legislation. Such constitutional changes are advocated as will abolish the senate and substitute a federal council as in Switzerland for our presidency.

The three most prominent organs of the moderates are *der Sozialist*, the official weekly already mentioned, started January 3d, of this year, the Philadelphia *Tageblatt* and the *New Yorker Volkszeitung*, a daily which also issues a weekly and a Sunday edition. The *Volkszeitung* is in its seventh year, and is decidedly the cleanest and ablest socialistic sheet in the United States. A similar newspaper in the English

language, called the *Voice of the People*, was started early in 1883. It appeared as a weekly, but promised a daily edition, which remained an unfulfilled hope, while even the weekly soon died.

An attempt is being made to win English-speaking followers, and the National Executive Committee advertises six pamphlets and a series of socialistic tracts in the English language. Some progress has been made in winning English-speaking adherents to the party; and large success has met their efforts to diffuse their ideas among the laboring classes, but, as the *Sozialist* frankly acknowledges, they are still a "German colony, a branch of the German social democracy." Indeed, one bond of union holding them together is their interest, and active participation in the election of members to the Imperial Parliament of Germany.

VI.

The Strength of Revolutionary Socialism—Its Significance.

The character, aims and methods of the two parties representing socialism in America have now been described, but a yet unanswered question is—What have we to fear from them?

The first step in the reply to this query is the ascertainment of their strength. While it is extremely difficult to make even an approximate estimate, and more than this is impossible, there are several indications of the extent of their power which must be noticed.

One of these signs is their press. The number of papers already enumerated is considerable, and others might be mentioned. Starkweather and Wilson, in their pamphlet, give three lists of journals. The first includes those which are "socialistic," and under this head sixteen journals are mentioned, of which three are dailies. The second list is com-

posed of ten "semi-socialistic" newspapers, of which two appear daily. "Socialistically inclined" periodicals, to the number of eight, constitute the third class. While some of the journals enumerated have ceased to appear, new ones have sprung up to take their place. It is a point worthy of note that a tireless, persistent effort is making to disseminate the most radical views by means of a press which appears, on the whole, to be increasing in power. The larger number of pronounced socialistic papers belong to the extremists, which may be considered as ominous an indication as the fact that they appear in all sections of the country, not excluding those which are supposed to offer the most favorable opportunities to the laborer. Denver, Colorado, sends us the *Labor Enquirer*, with the motto: "He who would be free, himself must strike the blow"; and not long ago, the *Tocsin, a Herald of the Coming Revolution*, rang out no uncertain warcry in Dallas, Texas. The only one of the parties having an English official organ is the International, with its *Alarm*, while the *Voice*, representing the Socialistic Labor Party, a comparatively modest and decent newspaper, failed for lack of support. This is one of the reasons for believing that the more violent are drawing by far the larger following.

It is difficult to estimate the strength of the socialistic newspapers. As already stated, the *Vorbote*, the oldest of them, is in its twelfth year. Their advertising patronage is often fair, which would seem to indicate a respectable circulation. *Truth* claimed a circulation of six thousand, which must be placed over against the fact that it finally ceased to appear for lack of sufficient support and the proprietor's statement that he sank $12,000 of his own money in the concern. The *Sozialist* in its fourth number[1] claimed 3,389 subscribers, in addition to five hundred copies sent in response to inquiries and distributed to different news companies.

[1] January 24, 1885.

But we must not confine ourselves to journals nominally socialistic in our attempts to estimate the influence of the press in the diffusion of socialism among American laborers.

There is the *Irish World and Industrial Liberator*, for example, which the socialists have long claimed as one of their agents, and there is a large number of papers, either organs of the Knights of Labor or of other labor organizations, or independent labor journals, which have many points in common with the socialistic parties, which are drawing nearer to them continually, and which undoubtedly help forward the general movement.

One of these papers, *der Hammer*, the official organ of the "metal-workers in North America," is permeated through and through with the doctrines of Marx, and for all practical purposes may be considered an organ of the socialists. Then there is the *Journal of United Labor*, the official organ of the Knights of Labor, which certainly inclines to socialism and is included by Wilson and Starkweather in their first list.

The number of labor papers in the country has been estimated to be four hundred. Most of them probably have a hard struggle, but one of their editors informed the writer that those which persevered had a great future before them, and this is doubtless a common opinion. Recently twenty or thirty of the papers, claiming altogether a circulation of 125,000, have joined hands in the formation of the *Associated Labor Press*, which is a coöperative movement to assist in procuring advertising patronage and to furnish all members with labor news, each paper sending news of interest to all the others.

These papers have strong ideas as to the rights of labor, and often advocate a reconstruction of society, but it is a more hopeful sign than others which have been noticed, that by far the larger number of labor journals, which are not distinctively socialistic, sympathize with the more moderate party rather than with the extremists.

Finally, it must be mentioned that foreign journals like *le Prolétaire*, of Paris, and *Der Sozial-Demokrat*, the central

organ of the German social democracy, published in Zürich, Switzerland, circulate to a limited extent among our French and German laborers.

The socialists in Germany almost universally believe in the ballot and participate in elections very generally, so that the results of the elections for members of the Imperial Parliament give one some notion of their strength and of their progress. It was, for example, an ominous indication, that the social-democrats sent twenty-four members to the German Parliament last fall, while up to that time they had never elected more than thirteen representatives. But in this country a large part of the socialists having abandoned the use of the ballot as a means of agitation, the fact that they have achieved little success as politicians is not so significant, and the constantly recurring elections give no guage with which to measure their growth.

While there may have been those in Congress who sympathized with many of their teachings, the socialists have never had a representative there who was elected nominally as their candidate. They have, however, elected municipal counsellors in Chicago, and have elsewhere gained a few victories through the ballot box. In 1879 four socialistic aldermen were elected in that city, and the party's candidate for mayor received twelve thousand votes. Three of their candidates for the House of Representatives and State Senate of Illinois were elected the same year. In 1878 they went into the field in Ohio with a state ticket, which received over twelve thousand votes, and this seems to have been their high water mark in politics in that state. The following year their State ticket in New York received ten thousand votes, or less, and this discouraged them.[1]

At their last Congress, in Baltimore, 1883, the Socialistic Labor Party reported the existence of thirty-eight "sections"

[1] Report of the Proceedings of the National Convention, held in Allegheny, Pa., 1879-80.

which were united in the central organization, in addition to a few independent sections. Rapid progress appears to have been made since then, however, as fifty-eight "sections" publish notices of their places and days of meeting, in the *Sozialist* for March 7, 1885. There is no means, so far as the writer is aware, of ascertaining the number of members in each section. The one in New York seems to be quite large, as it is composed of four branches, at least, and Branch One recently numbered two hundred and seventy-five members, while there were thirty applicants for membership. But most of the sections are evidently quite small, and an average of two hundred to each section would be a large estimate. It is very doubtful then whether there are at the outside twelve thousand members of the party. There are, of course, sympathizers who are not on their rolls, and if these be included the estimate which recently appeared in the *North American Review*, of twenty-five thousand Social Democrats and members of the Socialistic Labor Party, may not be too large.[1]

As already stated, the Internationalists give evidences of greater strength, and they are growing rapidly in numbers. The lowest estimate of their strength which has come under the writer's notice is six thousand members, including several armed and drilled companies, but this estimate was made several years ago and is undoubtedly too small. A prominent Chicago Internationalist at the same time claimed twenty-five thousand men "all armed and drilled." The reported existence of armed companies of socialists in Chicago—about which there appears to be no doubt—has recently attracted a great deal of attention and it has been thought necessary to protect more securely the armory of the national guards. It is said that there are no fewer than fifteen hundred men in these companies provided with Springfield and Remington rifles, and the socialists now claim twenty-five thousand adherents

[1] "American Labor Organizations," by Richard J. Hinton.

among the laborers of Chicago. It seems safe to believe that they are twice as numerous as the members of the Socialistic Labor Party and Social Democrats, which would lead us to estimate their numbers at fifty thousand.

The socialists are great advocates of the rights of women and endeavor to secure their help in the cause. In this they have met with some little success, and the women often seem the most violent. The colored are also sought, and once one of their candidates for member of Congress was a negro. It is doubtful if many of the colored race are sufficiently intelligent to grasp the aims and principles of socialism, but they are said to show great fondness for organizations for various purposes and to display, in cases, even greater fidelity to the rules of labor-unions than white men.

But in the case of trouble, accessions to the ranks of socialists from trades organizations might be expected to swell these numbers largely.

A short extract from the Declaration of Principles of the Central Labor Union of New York will show how correct is the socialistic view, that these labor and other like organizations are only "training schools" which "educate the laborers up" to socialism. It reads as follows: "We hold that the soil of every country is the social and common inheritance of the people in that country, and hence all should have free and equal access to the soil without tribute to landlords or monopolists.

"We hold that labor produces all wealth.

"There can be no harmony between capital and labor under the present industrial system."

This Central Labor Union is a large organization and embraces many separate labor associations, like the Upholsterers' Union, the Laborers' Union, the Coopers' International Union, the Furniture Workers' Union, Brassmakers' Union, Columbia Labor Club, etc., etc. It is said to number one hundred thousand members. The Central Labor Union of Brooklyn, a similar organization, claimed two years ago

over fifty thousand members. The *Voice* enumerated twenty-seven distinct labor unions which had taken stock in the publishing association which issued it.

Mr. Hinton, in the article in the *North American*, to which reference has already been made, estimates that all American labor organizations have 611,533 members, but this, there is reason to believe, is too low an estimate. He credits the Knights of Labor with only 150,000 members, for example, whereas some of them claim over a million members, which may be as far wrong in the other way. One thing can scarcely be doubted, and that is, that the organization of labor is progressing with marked rapidity at the present time. In cities various trades' unions are meeting in Central Labor Unions, and a few years ago there was formed "the Federation of Organized Trades and Labor Unions of the United States and Canada," designed to embrace "every trade and labor organization in North America." Its fourth annual session was held in Chicago in October, 1884.

Mr. T. V. Powderly, a member of the Knights of Labor, contributes an article to the April number of the *North American Review*, entitled "The Army of the Discontented." In this army he includes laborers without employment, whose number he places at two millions. A more satisfactory estimate was contained in a remarkable article published in Bradstreet's for December 20, 1884, according to which about 350,000 men, that is to say, fourteen per cent. of the total employed two years ago, were then out of employment in manufacturing establishments in the United States. This number comprised only a part of the unemployed, as it took no account of agricultural laborers, of clerks, and of other large classes. It must also be borne in mind that many who have work are employed only part time and reductions in wages are general.

On the other hand, discontent is the vaguest of expressions and does not imply desire for rebellion, reconstruction, or even for radical reform. But that there is a great deal of

grumbling of a serious nature cannot be doubted. A gentleman of most careful habits of observation and a representative of the class of large landholders in Illinois assures the writer that although there is no organized socialism or understanding of any theoretical body of socialistic doctrines among the agricultural laborers in his State, three-fourths of them are in such a frame of mind as to be easy converts even to quite radical forms of socialism.

A position has now been attained from which it is possible to estimate the precise nature of the danger to be apprehended. While it is extremely unpleasant to be called an alarmist, it is foolish to underrate the possible disasters in store for us; and it is precisely what people have, from time immemorial, been wont to do. Again and again have leaders of social forces behaved with the wisdom of the ostrich, which buries its head in the sand and believes there is no danger, because it can see none. The Philistine—and the greater majority of the ruling middle class are Philistines—loves the dangerous narcotic in the speech of him who cries: "'Peace, peace,' when there is no peace," and hails him as a wise man; while no one listens with pleasure to prophecies of evil. In fact, it is difficult to name a more disagreeable duty than to be obliged to prophesy misfortune to unwilling ears. Blame or ridicule is sure to be the lot of him who does this—the latter, if danger is successfully averted; the former, if it comes in spite of his efforts to ward it off, for a strange association of ideas places upon his shoulders the responsibility for calamities which he foresaw, and which he has perchance succeeded in mitigating. The word Jeremiads calls up a disagreeable picture of Jeremiah, while the gift of Apollo to Cassandra has forever removed her from the long list of Greek heroines of whom we delight to think. But thoroughly persuaded that serious dangers are in store for us, that calamities are ahead of us which it will be impossible for us to escape entirely, although a sufficiently early recognition of them may help to avoid a large part of the evils which would other-

wise overtake us, the writer feels compelled to speak his honest opinion and incur the risk of both ridicule and blame.

First, then, it is evident that there is no danger in any near future, probably not in the lifetime of any who read this, of a total overthrow of republican institutions in this land. Giving the socialists credit for all the forces they can possibly claim, they could muster under their banners only a comparatively small part of the population, and this composed of men scattered from Maine to California, and from Michigan to Georgia, and chiefly raw, undrilled laborers, without competent leaders or the resources which are the sinews of war. But does it consequently follow that they could do no serious damage? Let him who thinks so, remember the loss of life and property in 1877, the latter estimated at not less than one hundred millions of dollars. Now that is exactly what we have to fear, another 1877, and this is precisely that for which the socialists are preparing. It is a refrain which one finds repeatedly in all their publications: "Get ready for another 1877—buy a musket for a repetition of 1877." "Buy dynamite for a second 1877." "Organize companies and drill to be ready for a recurrence of the riots of 1877."

Truth in its number for December 15, 1883, published an article entitled "Street Fighting. How to Use the Military Forces of Capital when it is Necessary! Military Tactics for the Lower Classes." It purports to be written by an officer in the U. S. army, and a military authority informs the writer that the substance of this article, although possessing little merit, is not of such a character as to render this impossible. It suggests new methods of building barricades and improved methods of meeting attacking troops. Numerous and apparently reasonable diagrams are given. "Military knowledge," says the officer in the army of the United States, "has become popularized a little even since 1877, and it would not be hard to find in every large city of the world to-day upon the side of the people some fair leaders capable of meeting the

enemy in some such way as this:" then follows one of the diagrams.

The *Vorbote* has recently published a series of articles on the arming of the people. One sentiment which one often finds repeated is this: "We have shown too much mercy in the past. Our generous pity has cost us our cause. Let us be relentless in the coming struggle."

Truth, in its issue dated November 3, 1883, quotes Félix Pyat to this effect: "We have the right, we have the power; defend it, employ it! without reserve, without remorse, without scruples, without mercy. . . . War to the extreme, to the knife. A question of life or death for one of the two shall rest on the spot. . . . For the good of the people, iron and fire. All arms are human, all forces legitimate, and all means sacred. We desire peace, the enemy wants war. He may have it absolutely. Killing, burning—all means are justifiable. Use them; then will be peace!"

The revolutionists claim that while the first 1877 took them unawares, they will be armed to the teeth and ready for the second, which will usher in the dawn of a new civilization. It is surprising that many of them in their fury and fanaticism expect the present generation will not pass away until all their dreams are fulfilled and not one stone of our old civilization is left on another. There is no doubt about their terrible earnestness. One of them addressed recently an epistle to the writer, demanding of him whether in the coming conflict he would be found fighting on the side of the oppressed or the oppressor; "on the side of socialism or capitalism." In fact, a very little association and familiarity with the socialists is sufficient to convince one of their earnestness, as well as of the fact that property does not by any means invariably make conservatives of men. In Russia there is no lack of funds with which to carry on the revolutionary work; in France it is said that several millionaires belong to one group of socialists—to be sure the most moderate—and that forty thousand francs have been subscribed to further the dissemi-

nation of the views of a Belgian socialist, Colins, while in this country the money to build the Brooklyn Labor Lyceum, a structure devoted to the propagation of social democratic ideas, did not come entirely from proletarians.

Now can there be any doubt about the seriousness of the situation? If it were known that one thousand men like the notorious train robbers, the James boys, were in small groups scattered over the United States, would not every conservative and peace-loving householder be filled with alarm, and reasonably so? Yet here we have more than ten times that number educated to think robbery, arson, and murder justifiable, nay, even righteous; taught to believe the slaughter of the ruling classes a holy work and prepared to follow it with all the fanaticism of religious devotion, ready to die if need be, and prepared to stifle all feelings of gratitude and natural affection, and to kill with their own hands every opponent of the grand cause. It is, indeed, as President White has pointed out, an anomaly in our legislation, that it is lawful for a man like John Most to preach wholesale massacre, while it is criminal for A to incite B to slay C. And this Most is the lion among the extremists in the United States; this man who, on account of his excessive violence, was repudiated by his own countrymen and almost unanimously expelled from the social democratic party of Germany. There are those who, when extensive and riotous strikes again occur, will remember the teachings which are entering into their flesh and blood, yes, into their very soul, and will take their muskets and their dynamite and "descend into the streets" and, thinking the great day has arrived, will cast about right and left and seek to demolish, to annihilate all the forces and resources of wealth and civilization. While the result will be their inevitable defeat, it will cause sorrow and bloodshed to the defenders of our institutions, as well as to the rebels, and will drive further apart than ever before in this land, the two great classes of industrial society, employers and employees.

What we have to fear then is large loss of life, estrangement of classes, incalculable destruction of property and a

shock to the social body which will be a serious check to our economic growth for years to come.

VII.

The Remedies.

Now arises that old question, *Que faire?*—what shall we do about it? Well, there is no simple, easily-applied formula which will cure social evils, and any one who pretends to have at his command a cure-all for the ailments of the body politic is a quack worthy of no respect.

Certainly it cannot be the writer's purpose in the few remaining pages of the present monograph, which has already exceeded the proper limits of a paper in this series, to present an elaborate scheme of social regeneration, nor has he any intention of pointing out minute directions for the avoidance of dangers threatened by revolutionists. His aim is a more modest one. It is only to give a few suggestions, scarcely more than hints which may be useful to the reader, enabling him to contribute to a better utilization of the world's experience and of established rules of moral conduct.

When words give place to violent action, there is no doubt that severe punishment should be meted out to the offender against the laws of the land. But of more importance than severity in the administration of criminal law is certainty and celerity of punishment. This is not likely to be disputed, but when we come to agitation and incitement to revolution in a general way, there is more disagreement in regard to the course to be pursued. However, it is safe to say that the outcome of past experience is against legal interference with theorists before they proceed to overt acts. With ten times more favorable opportunities than exist in the United States, Bismarck has tried the enactment of severe laws against the socialists in Germany, but with very unsatisfactory results; so unsatisfactory indeed that it may be questioned whether he

has not strengthened the social democrats. He has rendered several services to them. He has united hostile factions into one compact party; he has in his persecutions enabled them to pose as martyrs, and actually to feel themselves such—and that is a great source of strength; finally, he has made propaganda for them, and drawn to them the sympathies of well-meaning people.

Every possible obstacle to their political action has had this result. They have elected the largest number of members of Parliament since these laws against them were in force. Russia, France and Germany, all serve as warning against restrictions upon the socialists in the United States.

But from the *Truth* of January 26, 1884, and a recent number of the *Sozialist*, we may gain a hint as to the true policy. In speaking of the indiscriminate use of dynamite as a means of propaganda, *Truth* says: "Its effect would be directly reactionary. Either it would induce repressive laws abrogating the rights we have now, which permit us to spread our doctrines, or it *would wring from the fears of the bourgeoisie such ameliorative measures as might postpone for centuries the final struggle for complete emancipation.*" The *Sozialist* of January 3, 1885, predicts that they, the socialists, will obtain assistance in their propaganda from their enemies, who will increase discontent among the masses, and thus prepare heart and mind for the seed they expect to sow.

The two words used by *Truth*, "ameliorative measures," indicate the correct method of dealing with social problems. We must listen to complaints of those who feel that they are oppressed, and not suppose that the demands of even socialists are unjust, simply because they are made by socialists. Who can object to them when they complain because they are not allowed to rest one day out of seven; because child-labor is tolerated; because families are scattered in workshops, and family life in any true sense of the word becomes an impossibility? It would indeed be well could every rich and well-to-do person be persuaded to listen to their complaints as they

appear in their papers, in order to know how they feel and what they suffer; or if the wealthy could more generally be induced to examine for themselves the way poor and honest people are often obliged to live. Let the careless and indifferent but read the articles now appearing in the *Christian Union* on the condition of the poor in American cities, or a single pamphlet like "The Bitter Cry of Outcast London," describing the life of the London laborer from the observation of city missionaries, and issued by the London Congregational Union! And if he thinks that, as is too often said, the laborers become accustomed to their lot and contented, let him but read their utterances in the labor press, or listen to them in their meetings! There are certain things a man can never get used to, as for example, an empty stomach and a home without fire. When poverty is extreme, it often sinks more and more deeply into the consciousness of the sufferer, and the burden grows with the weight of years.

Then it must not be forgotten that this age is not as other ages. There has been great progress in the intelligence of the laboring classes, and political equality has stimulated the desires of the masses for a larger share of material riches. The means of production have been improved in a marvelous manner, and the increase of wealth has been enormous. The question the laborer asks is not simply whether he receives more absolutely, but whether he receives as much in proportion to what the other classes of society enjoy. His wants have grown, and he is inclined to doubt whether he is as well able to gratify his legitimate needs as formerly. There may have been a time, for example, when he could not read. Then it was no hardship to him that he was unable to buy books. The case is different now.

First, then, let us listen to the demands the socialists and the laboring classes generally make of the present state, and discuss them in a spirit of candor, and grant them in so far as they may be just. It has already been seen what the Socialistic Labor Party desires of society in its present form, and

while it may be true that few political economists would assent to the practicability of all the measures they advocate, they are certainly worthy of discussion. Undoubtedly, one often meets with radical and apparently absurd propositions in the perusal of labor literature, but on the other hand one discovers at times a surprising spirit of conservatism, and is obliged to admit that many demands are perfectly legitimate, as the following "Platform and Supplementary Resolutions" of the Federation of Trades and Labor Unions abundantly prove.

"*Platform.*

"1. The national eight-hour law is one intended to benefit labor and to relieve it partly of its heavy burdens, and the evasion of its true spirit and intent is contrary to the best interests of the nation. We therefore demand the enforcement of said law in the spirit of its designers, and urge the enactment of eight-hour laws by State Legislatures and municipal corporations.

"2. We demand the passage of laws in State Legislatures and in Congress for the incorporation of trades and labor unions, in order that the property of the laboring classes may have the same protection as the property of other classes.

"3. We demand the passage of such legislative enactments as will enforce, by compulsion, the education of children, for if the State has the right to exact certain compliance with its demands, then it is also the duty of the State to educate its people to the proper understanding of such demands.

"4. We demand the passage of laws in the several States forbidding the employment of children under the age of fourteen years, in any capacity, under penalty of fine and imprisonment.

"5. We demand the enactment of uniform apprentice laws throughout the country; that the apprentice to a mechanical trade may be made to serve a sufficient term of apprenticeship and be provided by his employer, in his progress to maturity, with proper and sufficient facilities to finish him as a competent workman.

"6. It is hereby declared the sense of this congress that convict or prison contract labor is a species of slavery in its worst form; it pauperizes labor, demoralizes the honest manufacturer, and degrades the very criminal whom it employs; and as many articles of use and consumption made in our prisons under the contract system, come directly and detrimentally in competition with the products of honest labor, we demand that the laws providing for labor under the contract systems herein complained of be repealed.

"7. What is known as the 'order' or 'truck' system of payment, instead of lawful currency as value for labor performed, is one not only of gross imposition, but of downright swindle to the honest laborer and mechanic, and we demand its entire abolition. Active measures should be taken to eradicate the evil by the passage of laws imposing fine and imprisonment upon all individuals, firms, or corporations, who continue to practice the same.

"8. We demand the passage of such laws as will secure to the mechanic and workingman the first lien upon property, the product of his labor, sufficient in all cases to justify his legal and just claims.

"9. We demand the repeal and erasure from the statute books of all acts known as conspiracy laws, as applied to organizations of labor in the regulation of wages.

"10. We recognize the wholesome effects of a Bureau of Labor Statistics, as created by the National Government and in several States, and recommend for their management the appointment of a proper person, identified with the laboring classes of the country.

"11. We demand the passage of a law by the United States Congress to prevent the importation of all foreign laborers under contract.

"12. We declare that the system of letting out National, State, and municipal work by contract tends to intensify the competition between workmen, and we demand the speedy abolishment of the same.

"13. We demand the passage by our various legislative bodies of an employers' liability act, which shall give employees the same right to damages for personal injuries that all other persons have.

"14. We recommend all trades and labor organizations to secure proper representation in all law-making bodies, by means of the ballot, and to use all honorable measures by which this result can be accomplished.

"*Supplementary Resolutions.*

"1. That we urge upon the legislatures of our several States the passage of laws of license upon stationary engineers, and the enforcement of proper restrictions, which will better preserve and render protection to life and property.

"2. That we demand strict laws for the inspection and ventilation of mines, factories and workshops, and sanitary supervision of all food and dwellings.

"3. We demand of our Representatives in the National Legislature that they declare such land grants as are not earned by railroads or corporations forfeited, and to restore the same to the public domain."

The complaints of the socialists are often but too well grounded, when they criticise things as they are. Our laws regulating joint-stock corporations, for example, sadly need reforming, so as to prevent much dishonest manipulation of joint-stock concerns which might easily be avoided. One ought to be indignant when he sees familiar operations like this: A company is established; a few get control of the management; declare an unearned dividend; pay it out of the capital; then unload and acquire wealth at the expense of the widow, the orphan and the toiler. It is needless to multiply examples. If we turn to our governments we shall find in Star Route contracts and Tweed Ring frauds much to help us to understand why some people have gradually come to desire the overthrow of all that exists of human contrivance as preliminary to a new era.

Happily, much is being done to remedy abuses, and in many quarters a most hopeful desire is manifest to bring wealthy criminals to justice and to strive for needed reforms; and if the leaders of society evince an increasing willingness to listen to grievances of labor, to discuss their propositions and redress their wrongs, they will draw away from violent agitators the strongest and best of the workingmen and render the revolutionists comparatively harmless. To cite an example; no one can withstand the devotion of a life like Peter Cooper's, and it was touching to read the evidences of the appreciation of his deeds on the part of the laboring classes. Even *Truth* contained an obituary notice of him, in which the highest and most unreserved praise was accorded to his deeds.

The same journal contained a long and appreciative review of a book which had simply attempted to describe socialism impartially, with these words: "We hope the book will be extensively read by socialists, and that each reader will profit by the unprejudiced manner in which the historical facts and doctrinal matters are set forth, and that we shall learn to emulate the enemy in the coolness of our judgment and the calmness of our criticism." On the other hand, a socialistic journalist informs the writer that only one who has mingled, as he has, for years with the laboring classes can form any conception of the harm done by a recent book, which treated social problems in quite a different spirit, putting the whole question of reform on an unfair basis and treating the discontented with irritating impatience and stinging harshness. In the words of this journalist: "Mr. —— I regard as a bad man, one of the most dangerous of 'the dangerous classes.' Unless you mingled as I have done with the proletarians many years and knew by experience their feelings, you could not conceive the infinite injury such a man does to the cause he espouses. It inflames them more than standing armies and Gatling batteries."

It is true; a man was never won by cruel reproaches, and a strong government has its roots in the hearts of the people. It still holds that love is more powerful than hate.

A wider diffusion of sound ethics is an economic requirement of the times. Christian morality is the only stable basis for a State professedly Christian. An ethical demand of the present age is a clearer perception of the duties of property, intelligence and social position. It must be recognized that extreme individualism is immoral. Extreme individualism is social anarchy and—to cite a comparison recently made in Hopkins Hall—the first social anarchist was Cain, who asked indignantly if he were his brother's keeper. *Laissez-faire* politics assures us we are not keepers of our brothers, that each one best promotes the general interest by best promoting his own. There are those who tell us in the name of science, that there is no duty which one class owes to another, and that the nations of the earth are mere collections of individuals with no reciprocal rights and duties. It is time for right-thinking persons, and particularly for those who profess Christianity, to protest vigorously, in season and out of season, against such doctrines wherever found. As a friend, a professor in one of our leading colleges, forcibly puts it, the error of this school of political economists is that fundamental one of Herbert Spencer's ethical system, "a determination to ignore law and its sanctions."

A higher and more advanced political economy proclaims all this false, and asserts that within certain bounds we are obliged to concern ourselves about the welfare of others. Even less than law does political economy recognize any absolute proprietary rights, and in a higher ethical sense all our goods are but entrusted to us as stewards, to be administered in promoting the welfare of our fellow-men, as well as our own and equally with our own. If the rulers of our society remember this and act upon it, they surely never need dread the laborer.

A specific vice of our time, and one which political economists of all schools condemn, is extravagance and luxury. It is waste of economic powers, injuring those who indulge in it, and exciting envy and bitterness in the minds of those

who are excluded. The New York *Volkszeitung*, April 7, 1883, a socialistic journal, printed not very long ago a bitter description of a sinfully extravagant ball, given by a wealthy parvenu. It was significantly entitled "Mene, Tekel, Upharsin. Belshazzar in his glory."[1]

The social injury of vice is seen in the reproaches made against existing society by the Anarchists. A sad condition of family life is ridiculed and brought forward as proof of the hopeless rottenness of capitalistic society. In the long run, virtue is rewarded in states and in individuals, and that social body is doomed which is essentially immoral.

In conclusion, there are three chief agencies through which we must work for the amelioration of the laboring class, as well as of all classes of society. These are Science, the State and the Church.

One principal remedy against the evils of socialism, nihilism, and anarchism is a better education in political, social, and economic science. The dense ignorance on these questions, even among the better classes, is something astounding. People contend against an unknown enemy. There are very few colleges where any adequate instruction is given in the great social problems of the day. What is the result? Their graduates, instead of converting others from error, often yield to the foe of society. A graduate of a well-known college in New England, a clergyman, wrote not long ago that in his day they had in political economy only what could be learned out of a couple of text books, like Mill and Fawcett, eminently respectable authorities, but hardly containing all that is wanted by the college graduate of our day. It is not surprising, then, that two or three of his class, and among them a professor in a theological school, had become socialists. Education in political and social sciences ought to be given,

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[1] For a just estimate of luxury, considered from the standpoint of the economist and the Christian, see an admirable article by Émile de Laveleye in *The Popular Science Monthly* for March, 1881.

not only in colleges, but in every high school and academy in the land.

How is social power, the force which resides in society, to be utilized? The answer is, largely through the State, legally organized society. The individual has his province, the State has its functions, which the individual either cannot accomplish at all, or cannot accomplish so well. But an obstacle to the proper economic activity of the State has been found in the low view men have too frequently taken of its nature. Calling it an atomistic collection of units, some have even gone so far as to speak of taxation for the support of public schools as robbery of the propertied classes. Now it may rationally be maintained that, if there is anything divine on this earth, it is the State, the product of the same God-given instincts which led to the establishment of the Church and the Family. It was once held that kings ruled by right divine, and in any widely accepted belief, though it be afterwards discredited, there is generally found a kernel of truth. In this case it was the divine right of the state. Socrates, who held the laws of the state sacred and inviolable, even when they condemned him to death, had a correcter view of its nature than our modern individualists. The Christian ought not to view civil authority in any other light than a delegated responsibility from the Almighty. When men come to look upon their duty to the state as something as holy as their duty to the church, regarding the state as one of God's chief agencies for good, it will be easy for government to perform all its functions. Questions of civil service, as ordinarily presented, do not go deep enough. A higher conception of the state is required.

The church must claim her full place as a social power, existing independently of the state. It is said that the church is the representative of Christ, whose kingdom was not of this earth. True, but for us the higher life has its basis in the lower life, and that Christianity is certainly defective, which is not a living force in matters of temporal concern. It may

be that the talents entrusted to us here are small compared to the opportunities of a future state, but the attainment of the higher responsibilities depends upon the administration of our earthly stewardship. Now it seems to the writer that the church neglects the enforcement of our duties with respect to temporal concerns.

It is with satisfaction one turns from the study of social problems to the teachings of Christ, which seem, from a purely scientific standpoint, to contain just what is needed. On entering our churches, the painful scene of discord between what one sees and hears and what Christ taught, is by no means easy to describe. It is too frequently difficult to believe that the fashionable people about one are followers of the humble Nazarene, who found it so hard for the wealthy to enter the kingdom of heaven, and bid the rich young man sell all that he had and give to the poor. A great deal is said in criticism of the communism of the early Christians, and it is doubtless true that it proved no brilliant success, but it would be well to dwell more at length on the spirit which that early communism presupposed. A group of men and women, who sell their all and form one fund that they may live in common as brothers and sisters, without those social distinctions so dear to us all, must have been actuated by sincere convictions and unfeigned love. This is what men did who were near Christ and upon whom there had been a wonderful outpouring of God's Spirit. It may not be necessary for men to do that now, though it is not certain that many a man may not be called upon to part with wealth for the sake of Christian progress; but it is necessary that Christians manifest a willingness to do this.

In the harmonious action of State, Church and individual, moving in the light of true science, will be found an escape from present and future social dangers. Herein is pointed out the path of safe progress; other there is none.

V-VI-VII

LOCAL INSTITUTIONS

OF

MARYLAND

"That which constitutes History, properly so called, is in great part omitted from works on the subject . . . . only now, when the welfare of nations rather than of rulers is becoming the dominant idea, are historians beginning to occupy themselves with the phenomena of social progress. That which it really concerns us to know, is the natural history of society. We want all facts which help us to understand how a nation has grown and organized itself. Among these, let us of course have an account of its government; . . . and let this account not only include the nature and actions of the central government, but also of local governments, down to their minutest ramifications."—*Herbert Spencer's Education.*

". . . the aforesaid now Baron of Baltimore, his Heirs and Assigns, from Time to Time hereafter, for ever, may and can, at his or their Will and Pleasure, assign, alien, grant, demise, or enfeoff so many, such, and proportionate Parts and Parcels of the Premises, to any Person or Persons willing to purchase the same, as they shall think convenient. . . ."—*Charter of Maryland, XVIII.*

"It shalbe lawfull for the ffreemen in every Hundred to assemble themselves together at some place to bee nominated within theire Hundred by such Commander or other officer in each hundred as shalbe nominated . . . and then and there by the maior voice of the ffreemen p[r]sent to propose and conclude of such orders & ordinances as they shall Judg meete and necessary for the defence of each pticular hundred."—*Archives of Md.*, 1649, *p.* 254.

"This system imparts to the State the character of a confederacy of counties."—*McMahon: Government of Maryland, p.* 464.

"And be it further enacted, by the Authority aforesaid, That Two Hundred Acres of Land, so as aforesaid to be surveyed and laid out into Lots, immediately after the same shall be surveyed and laid out, shall be, and is hereby made and erected into a Town, and shall be called *Charles-Town;* and that the other Three Hundred Acres aforesaid, to be laid out for a Common, shall and is hereby made and declared to be the Common of the said Town; and that all and every the Inhabitants of the said Town shall, at all Times, have and enjoy the free Use and Benefit thereof in Common."—*Bacon: Laws of Md.*, 1742, *Chap. XXIII.*, 6.

". . . but the settlers, and now the Government, call *town* any place where as many houses are as are individuals to make a riot, that is twenty, as fixed by the Riot Act."—*Foley: Records, Eng. Prov. S. J., III., p.* 323, (*letter from Maryland.*)

"The civil government in Maryland was in many instances copied from similar institutions which had been in practice and use in the elder colony of Virginia."—*Bozman: History of Md., II., p.* 44.

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HERBERT B. ADAMS, Editor

History is past Politics and Politics present History — *Freeman*

THIRD SERIES

V-VI-VII

LOCAL INSTITUTIONS

OF

MARYLAND

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I.

THE LAND SYSTEM.

In the last century there appeared in Europe many books of travels containing chapters upon the English colonies in America and illustrated by quaint maps giving the boundaries of the different colonies. Upon a few of these maps the northern boundary of the province of Maryland is represented as making a deflection near the headwaters of the Potomac River and running in a northwesterly direction toward the great lakes. The latitudinal boundaries of many of the colonies extended indefinitely toward the so-called South Sea, but, happily for public welfare, Maryland never included any part of the western lands of the Continent. If the government of Maryland could have established any claim to a portion of the territory lying north of the Ohio River, it is not improbable that the confederation of American Colonies, made in 1781, would have been long delayed, and their entire post-revolutionary history become radically changed.[1] Maryland lost no land in the cessions of northwest territory made by the colonies to the general government, for the simple reason that she never owned an acre of this large district. Nevertheless the present boundaries of the State, owing to the depre-

[1] The results that followed the firm stand taken by the Maryland Assembly, in their resolution that the Northwest Territory should be ceded to the general government by the States laying claim to portions of it, are described in "Maryland's Influence upon Land Cessions to the United States," Johns Hopkins University Studies, Series III., No. 1.

dations of her neighbors, contain not much more than a half of the territory originally granted by Charles I. to the first proprietary of the province.

If Cecilius Calvert, the first lord proprietary of Maryland, could have substantiated his claims, the State of Maryland would comprise, in addition to its present area, all that part of Pennsylvania south of the parallel of Philadelphia and lying between the Delaware River and the most western ridge of the Alleghanies, also all of the State of Delaware, a part of the eastern shore of Virginia, and all that part of West Virginia included between the north and south branches of the Potomac Rivers. The territory included in the province of Maryland was undoubtedly the largest land grant ever made by a sovereign of England to a subject. The power and privileges vested in the lord proprietary corresponded with the area of the grant.

The charter of Maryland which secured to Lord Baltimore his new province in the new world, passed the great seal June 20, 1632, nine years after the grant of Avalon, in Newfoundland. In form there is not much difference between the charter of Avalon and the charter of Maryland, but there is a great difference in the tenure of land under the two charters, and in the administrative powers conferred. It was the tenure by which Maryland was held that gives such importance to the land system of the province, and that caused such a complex and unique system of land laws to be instituted.

Sir George Calvert had been a courtier at the court of King James nearly a decade from the time the charter of Avalon was granted till he had finally drawn up the Maryland patent, and during this interval he had not neglected to remedy the defects in his first charter so as to prevent such a disaster and failure in the new scene of colonization as had occurred to him at Avalon. Each of the two territories was held by feudal tenure. Avalon was held in capite, by knight's service. It is not stated to be held by fealty. Maryland was held by the most desirable kind of tenure known to

English law, the tenure known as "free and common socage," by fealty. Being held by the tenure also known as petit sergeanty,[1] the lord proprietary was required each year to present two Indian arrows to the king at his castle of Windsor. Avalon had been purchased, but Maryland was a royal grant.

The boundaries of the province as defined in the charter were in general clear and explicit. They comprised all that part of Virginia lying north of the Potomac River and south of the 40th parallel of latitude, and extending westward from the Atlantic Ocean to the meridian passing through the fountain head of the Potomac River.[2] The boundary disputes[3] which followed subsequent grants were generally decided against Baltimore; and the various steps by which Maryland lost territory on all sides of her boundaries, through the greed of her neighbors and the insincerity of the English sovereign, are a fruitful commentary on laws and ordinances impairing the obligation of contracts.[4]

Not including the water area, Cecilius Calvert came into possession, in 1632, of from ten to twelve million acres of land.[5] It was a grand fief for a young man only twenty-six years of age.[6] But the subsequent laws promulgated by him

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[1] Abbott: Law Dictionary, 2: pp. 463, 551.

[2] Charter of Maryland, sects. III. and V.

[3] The boundary disputes between Maryland and Pennsylvania have been fully described in a paper by W. B. Scaife, of the Johns Hopkins University, to be published in the Pennsylvania Magazine of History and Biography.—Ed.

[4] For an account of the dismemberment and partition of Maryland, see McMahon, I., ch. I., pp. 18–59, and Browne: Maryland, pp. 124, 137, 212, &c.

[5] The present total area of Maryland is 7,000,000 acres, of which about 6,000,000 acres is land.

[6] A great many encomiums have been passed upon Cecilius Calvert and his brother Leonard for their magnanimity in buying from the Indians the land upon which they settled and not taking it by force. Probably it was not so much a matter of fair dealing as it was of prudence. Only a few years before the Maryland settlers landed at the mouth of the Potomac, a

for the government of this principality indicate that he was fully prepared to assume the responsibility.

The foundation of civil government in Maryland was the charter,[1] a long instrument originally written in Latin. Two years elapsed from the granting of the charter to the arrival of the emigrants in Maryland. During these two years Baltimore was busy framing the new government and looking around for able-bodied settlers. In addition to the executive and judicial powers secured to the proprietary by the patent, he was vested with extraordinary legislative powers. This is noticed in the disposition he could make of the land of the province, and of the conditions imposed and honors conferred upon freeholders. According to the charter, Baltimore was made the supreme land-owner of the province, he

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horrible massacre of the whites by the Indians along the James River had nearly paralyzed the efforts of the great trading companies to settle these regions. Governor Calvert gave the Indians of Yaocomaco a few axes and hoes for a small tract of land and for their generous hospitality in allowing the settlers the use of Indian huts, utensils and provender. Penn likewise gave the Indians of Shackamaxon a few trinkets and some cloth, but in neither case did the proprietors of the two provinces give to the Indians more than would purchase a few acres of land. History says nothing about the millions of acres appropriated by the two proprietors, for which no actual equivalent was given to the Aborigines. Cecilius Calvert did set aside about eight or nine thousand acres, in 1651, for the use of the six nations living in the province, being "bound in honor and conscience" to allow them this estate. But he did not forget to charge them the same rental as he exacted from the white settlers. (Bozman, II., p. 676). Baltimore did not recognize the validity of the Indian titles to the land of the province, and it was upon this point that he had a stubborn contest with the Jesuits who bought large tracts of the Indians.

[1] The Charter of Maryland was treated like the Constitution of the United States, with a loose or strict construction, according as the upper or lower house dominated. A minute of the proceedings of the upper house, April 15, 1669, reads: "then came 3 members of the lower house and desired to have a coppy of the Lord Propys pattent for this province, that they may the better proceed and not intrench upon his lõps prerogative." At a later date in the same session of the Assembly, the upper house declared: "If no charter, there is no Assembly: no Assembly, no privileges." Archives, 1669, pp. 159 and 178.

had exclusive property in the soil. The king reserved to himself one-fifth part of all gold and silver mined. The proprietary had the right of re-establishing in the new world the feudal system which had been gradually broken up in England, and which was entirely swept away by Charles II.[1] By an unusual assertion of the royal prerogative on the part of Charles I., Baltimore was granted the right to erect manors and manorial courts in Maryland, a right which the statute *Quia Emptores* prevented the king from enjoying in England.

According to the charter, Lord Baltimore was given full and absolute license and authority, at his own will and pleasure, to "assign, alien, grant, demise or enfeoff" such parcels of the province as he found convenient, in fee-simple, fee-tail, or for a term of years, and to receive in return "so great services, customs and rents" as were agreeable to him. No title from any Indian was to be recognized as valid, and the purchasing of land from the aborigines was a criminal offence and made the territory so purchased liable to forfeiture.[2]

In addition to his exclusive right to the soil of the province, as the supreme land-owner, the proprietary was vested with exclusive suzerainty in the government of the province. As lord paramount of the territory he was held to occupy the same position in regard to the free holders of Maryland as the King of England held with respect to his liege subjects. His relation to his colonists was not simply that of supreme lord, but, by special terms of the charter, he was

[1] "Feudalism in England received a death blow in 1660, by St. 12 Charles II., c. 24. It abolished court of wards and liveries, also wardships, liveries, primer seisins, ouster le mains, value of marriages, fines for alienation, escuages and aids, and other incidents of tenure by knight's service or socage tenure in capite." Smith's Eng. Inst., p. 27.

[2] The absolute right of the proprietary to all the land of the province was recognized by the Assembly. The purchasing of lands from the Indians was declared by the burgesses to be unlawful, prejudicial to his lordship, dangerous to the community and liable to "bring a great confusion in the government and publique peace of this province." Archives, 1649, p. 248.

made the supreme arbiter of the lives, fortunes and property of the people, the source of all honor, justice, religion, order, and to a large degree of law itself. He could promulgate ordinances and claimed by his prerogative the right to dispense with existing laws. He was invested not only with all the rights ever enjoyed by any bishop of Durham, within the county palatine of Durham, but he was vested with additional rights and jurisdiction. In a word, we can say with McMahon, that the grant of Maryland was "the most ample and sovereign in its character that ever emanated from the English crown."[1] In a proclamation issued in 1649, Baltimore declares himself "absolute lord and proprietary" and asserts his claims to royal jurisdiction in the province.[2]

It has been said that Baltimore was "monarch of all he *surveyed*." It is not probable that Cecilius Calvert, during his administration, managed to locate the four corners of his province, but in the proceedings of the Assembly of 1663 it was asserted that only a small part of the territory remained unpatented.[3] The means by which in a single generation, (1633–1663,) nearly the whole province had been subdivided among the settlers is an interesting chapter in the land system of the province.

It is now generally admitted that economic motives and not religious considerations led the Calverts to found a province in the New World. Religious refugees did not

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[1] McMahon, in his History of Maryland, devotes several pages to a discussion of the powers attached to the palatinate jurisdiction. McMahon, I., pp. 151–155. He refers the reader to 6 Viner's Abridgment, pp. 573 to 583, and 2d Bacon, pp. 188 to 192.

[2] In this declaration he says, "We are well satisfied by learned council here and such as are best read in antiquities, that the bishops of Durham before Henry the 7th, his time, (heretofore King of England,) had and did exercise all royal jurisdiction within the said bishoprick or county palatine, though this latter years their jurisdiction was much diminished by an Act of Parliament, made in the time of the said Henry [8th.]." Bozman II., pp. 669-70.

[3] Archives, 1663, p. 483.

flock very rapidly to his standard. The proprietary, we observe, issued, from time to time, "relations," pamphlets and proclamations setting forth the advantage of the new territory. The fruitful soil, the serene, mild climate, the streams abounding in fish and the forests swarming with game, are advertised as inducements to settlers. These bright attractions won many of the common people. The gentry of England, however, remembered that Calvert was a Catholic, that he was invested with vice-regal powers, that he was young and ambitious. This class was reached by the tempting offer of large local power and authority over those districts to be selected by them. As a means to secure such local influence and dignity, he agreed to delegate a part of his large powers to the heads of colonies taking up large parcels of land, and to erect their lands into manors.

The statute *Quia emptores*, enacted in the reign of Edward I., (18 Edward I., c. I.) directed that in "all sales or feoffments of land the purchaser should not hold of his immediate feoffer, but of the chief lord of the fee."[1] The aim of the statute was to strengthen the hands of the king, and to prevent the intermediate lords from subinfeudating their lands. This great land-law, marking an epoch in the constitutional history of England, enacted in 1290, was virtually set aside by Charles I., after an interval of three and a half centuries, and the privilege denied the great feudal barons of England was bestowed in all its fulness upon the young Irish peer.[2]

The proprietary of the province became by the terms of his charter the sole tenant of the crown; the freeholders as sub-tenants should hold not of the king, as their superior lord, but of the lord proprietary. Apparently this clause of

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[1] See Kilty: Land Holders' Assistant, pp. 22, 28.

[2] Green says the statute "*Quia emptores*" marked the progress of a wide social revolution in the country at large. It indicated the waning influence of the baronage. It was intended to check the growth of "squirearchy." Green: Short History of English People, p. 167.

the charter was of more benefit to the proprietary than to his tenants. In the hands of a ruler less wise and less liberal than the second Lord Baltimore, it is probable that the great power and property held by him would have led to usurpation and anarchy, as in other colonies. Cecilius inaugurated his liberal policy by offering generous conditions to all who would take up land in his province.

Kilty says the first "conditions of plantations" were published by order of Baltimore in 1633.[1] The earliest known publication of these conditions is contained in a pamphlet which appeared in 1635.[2] By these conditions 1,000 acres of land were offered to each adventurer transporting five men to the province, with manorial privileges, at a rental of 20 shillings sterling or in commodities, and "such other services as shall be generally agreed upon for publicke uses and the common good." Similar terms were offered to leaders of smaller colonies. These conditions of 1633 were in part superseded by the more favorable ones published shortly after the province was settled. These second conditions, published August 8, 1636,[3] instructed the Governor of Maryland to grant 2,000 acres of land to each of the original settlers of 1633/4, for every five able-bodied men in his household, for the yearly rental of 400 lbs. of good wheat. Each adventurer transporting smaller colonies was granted 100 acres of land for himself, wife and each servant, and 50 acres for each child at the annual rental of 10 lbs. of wheat for each 50 acres taken up. Adventurers of the two succeeding years were allowed 2,000 acres for every ten men on payment of 600 lbs. of wheat annually. Terms almost as favorable were offered to smaller companies. Each adventurer was required to "inhabitt and plant" the land taken up by him. The evident design of the proprietary was to

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[1] Kilty, p. 29.

[2] "Relation of Maryland," anno 1635, reprint, Hawke's Edition.

[3] Kilty, p. 30–31.

dot the province with small yet vigorous and self-sustaining colonies, and that these should become the economic and industrial centres of the province. He provided for the government of the larger land communities so as to keep them under control and yet not burden himself with the petty local affairs, by the institution of manors.[1] The governor was authorized to erect each holding of 1,000 acres or over "into a mannor, to be called by such name as the adventurer or adventurers shall desire."[2] The privileges of a court baron and a court leet were granted to each manor. Blank forms of manorial grants and freehold grants accompanied the copy of conditions.

Subsequently general conditions of plantations were made in the years 1641, 1648, &c.,[3] and specific conditions are contained in the instructions and commissions directed to the governor of the province. The tendency of subsequent grants was to decrease the amount of land granted for each able bodied man, and to make the rents payable not in kind but in money sterling. Settlers taking up land under the conditions of 1641 were required to provide a specified quantity of arms and ammunition for each man of his company between the ages of sixteen and fifty years. The great seal of Maryland having been stolen, presumably by Ingle, in February, 1644, no further grants were made until the arrival of a new great seal in the early part of 1649.[4]

But the most important feature of the conditions of 1641 was the clause forbidding the alienation of lands to any corporation, temporal or ecclesiastical, without special license

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[1] It will be remembered that Baltimore instituted the manorial form of local government in the New World. The charter of 1632 is the first one to mention manors. Upon this subject, see "Old Maryland Manors," by John Johnson, A. B., Studies I., No. 7.

[2] Kilty, p. 31. Subsequently all holdings in Maryland, including manors, were known by some specific name, given by the taker-up of the land.

[3] See Kilty, pp. 30–36. Browne: Maryland, pp. 55, 56.

[4] Kilty, p. 44.

from the proprietary. The object of this restriction was to prevent the accumulation of large landed estates in the hands of the Jesuits.[1] This ordinance of the proprietary was the Maryland statute of Mortmain. Its effect is felt to this day.[2] The commission annexed to the conditions of 1649 authorized the governor to grant land to persons of French, Dutch or Italian descent upon the same terms as to persons of British or Irish descent.[3] It was to these conditions that foreigners appealed when subsequently petitioning for naturalization in the province.[4] Upon all land grants the conditions were imposed, implied or expressed, that the patentee should swear fealty to the lord proprietor.[5] From one of the clauses in the conditions of 1648, it would seem that the conditions of plantations in Maryland were to some extent copied from those of Virginia.[6] The Governor was not authorized to make grants of land except in accordance with the warrant of the proprietary or according to the general conditions of plantations, but on rare occasions the governor made special grants before being instructed. In the year 1634 Capt. Henry Fleet received from the *governor and commissioners* of Maryland a grant of four thousand acres, a part of which was erected into the manor of West St. Marys.[7] But this discretionary power on part of the governor was not often exercised. The proprietary, however, frequently made

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[1] Johnson: Foundation of Maryland, p. 61, &c., (Maryland Historical Society Fund Publication.) Foley: Records of the English Province, Society of Jesus, vol. III., pp. 362–366, 385.

[2] The General Assembly of Maryland has succeeded to the position held by the lord proprietary, and in this State no real property can be devised to a religious corporation without a special Act of Assembly. See Browne: Maryland, p. 57. Maryland Code.

[3] Kilty, p. 46.

[4] Archives, 1666, p. 144. Petition for naturalization of John Jarbo, Augustine Hermann, *et al.*

[5] For a form of oath required, see Bozman, II., p. 659.

[6] Bozman, II., p. 658.

[7] Kilty, pp. 64 and 65.

special grants of land as a mark of favor or in return for services rendered. We notice special warrants granted because the receiver of the grant intended to bring over a number of "artificers, workmen and other very useful persons," or because he intended to plant a vineyard, or in return for services rendered in the time of Ingle's rebellion, &c.[1] The lands were therefore granted at first only to immigrants from Great Britain and Ireland. Preference was shown to heads of small colonies, and especially to colonies containing the largest number of able-bodied men. From 1641 it was unlawful to alienate lands to corporations, on pain of forfeiture; and from 1649, grants were made to persons of foreign birth. Fealty was required of all freeholders.

The next consideration claiming attention was the size and location of grants. It has been seen that, by the conditions of 1636, the settlers of 1633-4 were allowed 2,000 acres for every five able-bodied men, or 400 acres *per caput*. This was the maximum grant allowed settlers, except for special services rendered. The same conditions allowed 50 acres to each child of a family. The conditions of 1641 allowed 25 acres of land to each child, and fifty acres to each adult. Henceforth fifty acres was the usual amount allowed to each immigrant.[2] The ordinary homestead of the average family was thus about 200 acres. But there is reason to believe, judging from the numerous places marked as manors upon early maps of the province, that there were many grants of a manorial kind, 2,000 acres, and there are some instances of very large grants. A certain Eltonhead received a grant of 10,000 acres,[3] and Mr. Charles Carroll of Prince George's county received a grant of 20,000 acres. Adjoining the

[1] Kilty, pp. 78, 79, 80.

[2] The conditions of 1649 allowed 100 acres to every adventurer of British or Irish descent, but for fear the whole province would become in short time tenanted by a few persons only, the grant was in 1651 reduced to 50 acres to each immigrant. Bozman, II., p. 677. Archives, 1651, p. 331.

[3] Kilty, p. 100.

Carroll estate the proprietary reserved a tract of 15,000 acres for personal use.[1] The whole western portion of the province, lying beyond Fort Cumberland, was reserved for Baltimore and steps were taken to erect it into a proprietary manor.[2] It is worthy of note that these Maryland reserve lands were subsequently given by the State to the valiant survivors of the Maryland line, in the war of Revolution.[3]

As a means to prevent a too general diffusion of the people throughout the province, it was specially provided that each of the early settlers should be assigned a house lot in the town of St. Mary's. To each of the first adventurers was granted "ten acres of land within the plats assigned or to be assigned for the town and fields of St. Mary's."[4] As the province increased in population, and when disputes began to occur in regard to outlying parts of the province, special efforts were made to colonize such places.[5] Extraordinary measures were taken in 1683 to induce settlers to migrate to the part of the province lying around the head of the Chesapeake Bay, then known as New Ireland. Col. George Talbott, a relative of the proprietary, was made deputy of these north-east sections of the province, and was granted very extensive powers in the disposing of land to immigrants.[6] The large powers granted the commander of Kent included the authority to dispose of lands to settlers upon this outlying island.[7]

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[1] Kilty, p. 100.

[2] Kilty, p. 263-265.

[3] Kilty's Laws of Maryland, 1788, ch. 44, November. See also Landholder's Assistant, p. 343, et al.

[4] Bozman, II., p. 40. Kilty, p. 32-33.

[5] Kilty, pp. 38-60. Lands were granted on credit to persons settling at the Whore Kills, in the present State of Delaware.

[6] Kilty, p. 172, (note.)

[7] In the Landholder's Assistant, Kilty has preserved copies of the demands of settlers for land grants, viz.: "Thomas Cornwaleys demandeth 2,000 acres of land by *first* conditions of Plantation, for transporting into the Province five able men servants in the year 1633." p. 70. "More

As the proprietary of the province was the sole owner of the land of the province, we find no Act of Assembly interfering with the agrarian rights of Baltimore. He was permitted to dispose of his lands according to his own interests. The Act of 1642, "touching taking up of land," simply emphasized the conditions of 1641, and also prescribed in what form the land patent should be made.[1] Several Acts were passed by the Assembly, called by Cromwell's commissioners, infringing upon the rights of the lord proprietor, but these Acts were promptly repealed by Baltimore upon coming into power. Even during the interregnum in Maryland, Baltimore's claims to the soil of the province were not openly controverted, and the principal changes made by Cromwell's commissioners were of a political nature, *e. g.*, relief of the settlers from taking the oath of fidelity to the proprietary, &c.

The various kinds of land tenure in the province were instituted almost entirely by the lord proprietor. The charter authorized him to alienate land in any manner he might deem expedient. As a rule the lands were granted in fee simple, but with certain feudal rights reserved to the proprietor, and the patent was made out in favor of the grantee, his heirs and assigns. The "quit-rents" paid by the holder of land to the proprietary are termed by Mayer the "rent services."[2] He compares the Maryland tenure to the *rente foncière* of Louisiana. The receiver of land received it in perpetuity, as a rule, on condition that he pay the annual rental. He could alienate it to any other person. The proprietary could only re-enter when the rent was not paid.

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demandeth 3,000 acres of land by conditions of Plantation, for transporting into the Province 15 able men servants since the year 1635." Supra, p. 70. "4th April, 1643. Nathaniel Orchard demandeth 100 acres of land due by conditions of Plantation, for transporting himself into the Province in the year 1640." Supra, p. 69.

[1] Archives, 1642, p. 159-60.

[2] Mayer: Ground Rents in Maryland, pp. 15–18. McMahon calls the rents, *rent charges*. McMahon, I., p. 169.

The estates held by the settlers were called "freeholds" in Acts of Assembly and elsewhere, but they were not the freeholds of the present day. Being subject to the annual quit-rent, they were estates in trust rather than allodial estates, and were feudal in form if not in essence.[1] The holdings being assignable and transmissible, formed an actual estate of inheritance. Restrictions however could be placed by lords of manors upon their under tenants, and there is no evidence that a manor could be subdivided into smaller manors by the tenants. It was quite common for the lords of manor to subinfeudate parts of their estate. This privilege was granted by the conditions of 1649. They were empowered to grant any portion of their manor, save the demesnes, to any English subject, "either in fee simple or fee tayle for life, lives or years," and under such rents "not prejudicial to his lordship's royal jurisdiction."[2] The entailing of estates was not specially granted to the lords of manors and other freeholders, but it was a right not repugnant to the proprietary, and became very general throughout the province.

Mayer makes mention of a kind of limited or base lease known as "Proprietary Leases."[3] They all ran for ninety-nine years, but contain no covenant for renewal. Many of the reserves and manors of the proprietary were so leased. According to the provisions of these leases, all mines of metal discovered upon the land belonged to the proprietary. They could not be alienated for a period longer than a year without special license of the proprietary or his agent. Upon the

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[1] To each adventurer was granted "fifty acres of good land lying together in one place within the said province, to be holden of some mannor there of his lordship's and his heirs in socage tenure rendering and paying yearly for every fifty acres" a rent of one shilling sterling, &c. Bozman, II., p. 657. Charles Carroll's tract of 10,000 acres was held "as of our mannor of Baltimore, in free and common socage, by fealty only for all manner of services." Mayer, p. 20.

[2] Bozman, II., p. 657.

[3] Ground Rents in Maryland, p. 28–29.

failure of the lessee to keep certain conditions the property immediately reverted to the proprietary.

It is interesting to find that copyhold tenure was not unknown in the early periods of the provincial history.[1] But instead of being brought about as in England by a gradual rise from the villein tenure, it had in Maryland been caused by a depression of former leasehold and freehold tenures. Many of the copyhold tenures became further depressed into the base villein tenure. Examples of the copyhold and villein tenures were frequent among the more peaceful Indians of the province. As in England the copyhold estates were held by a fixed though onerous tenure. In a letter of the year 1651 to Governor Stone, the proprietary says he is informed that six nations of Indians desire to put themselves under his protection. He therefore directs that a tract of land, about eight or ten thousand acres in area, be reserved for him at Choptico, at the head of the Wicomico River. The surveyor general of the province was appointed steward of this tract, erected into a manor by the name of Calverton. The steward was directed, on behalf of the proprietary, to grant, "by copy or copies of court-roll, copyhold estates, for one, two or three lives, of any part of the said manor, except the demesnes thereof, to any Indian or Indians that shall desire the same." No copyhold should exceed fifty acres, except "to the werowance or chief head of every of the said six nations abovementioned."[2] There is no evidence to what extent the Indians became willing to become copyholders of the land which formerly they held in fee, or at least in com-

[1] "If it appeared that the grants of these tenants had been entered on the record of the court-baron, the above extracts might be construed as an evidence of a holding by copy of court-roll or according to the custom of the manor, usual in England, . . . and there is reason to presume that in connection with the system of manors, the incidents of copyhold estates, viz: fealty, suit of court, reliefs or heriots, quit-rents and fines, were not unknown for a time at least." Mayer, p. 24.

[2] Archives, 1651, pp. 329, 330. Bozman, II., p. 676.

mon. But the evidence is very conclusive that, not knowing the intricacies of the Englishman's land tenures, he became even further degraded, and like the Saxons of England, after the Norman invasion, was obliged to become the mere villein of the lord of manor, and to hold his small holding entirely upon the will of his master and at the charge of unlimited services.[1]

Another important feature in the land system of Maryland was the succession and alienation of land, or its transfer from person to person. As the freeholds were in general an estate of inheritance, no impediments were placed upon bequeathing it to the heirs of the owner. The right of bequest was secured to each freeholder by the conditions of plantations. Acts of Assembly were enacted from time to time, regulating the descent of land according to the "generall custome or common law of England." These Acts secured the rights of widows and provided for the care of orphans' estates.[2] In the ordinary conveyance of land from one party to another, it had been customary, in the early stage of the provincial history, to surrender the patent back again to the proprietary or his agent, the purchaser having a new patent granted to him.[3] But the more simple form was introduced, viz.: conveyance directly from the seller to the purchaser, by means of a deed.[4] In the case of an estate left without heirs, it escheated to the proprietary as lord of the soil. Such lands became his undisputed property and could be regranted by him like other lands not hitherto patented.[5]

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[1] In the "Landholder's Assistant," ch. VI., Kilty gives some interesting details about statutes and ordinances, referring to Indian lands. As late as 1798, an Act was passed debarring the Indians from selling, leasing or disposing in any way of the lands held by them at Secretary's Creek, Dorchester County. In a sense, the Indians became copyholders of the State. Kilty, p. 357.

[2] Archives, 1638-9, p. 60; 1642, p. 157.

[3] Kilty, pp. 210, 211.

[4] Archives, 1663, p. 487-488.

[5] Bozman, II., p. 581: Kilty, pp. 103, 104, 177, &c.

In connection with the land system of the province, a large share of attention was naturally devoted to the subject of land rents. It may be premised at the start, that although Baltimore was an Irish peer, he never permitted the rack rent system to be introduced among the English subjects in his province. The legal name of the rentals in Maryland was "quit-rent." The rent was certain and unvariable, and upon its prompt payment the tenant was quit of any other service except fealty. Ricardo has defined rent as "that portion of the produce of the earth, which is paid to the landlord for the use of the original and indestructible powers of the soil."[1] In Maryland the rent was originally paid in kind and not by money payments. It was from the quit-rents that the proprietary derived the largest income from his province. By the conditions of 1636, the oldest settlers of the province were required to pay an annual rental of 20 lbs. of good wheat for every 100 acres of land patented. The settlers during succeeding years were charged at the rate of 30 lbs. of wheat for 100 acres. Immigrants taking up lands after the year 1635 were required to pay for every 1,000 acres, "the yearly rent of twenty shillings, to be paid in the commodities of the country."[2] Whether estimated in commodities or in money, the rent services were not onerous. By the conditions of plantations of 1648 and 1649, the manorial lands were subject to a rental of forty shillings sterling for every 2,000 acres for the first seven years, of forty bushels of wheat, or six pounds sterling, for each of the succeeding fourteen years, and for all time thereafter the annual rent should be the twentieth part of the annual yield of the land, or in lieu ten pounds sterling.[3] The option of paying in commodities or in money lay with the proprietary and not with the tenant. As he had the choice of being paid in gold, silver, or produce, it is to be

[1] Ricardo, Pol. Economy, ch. 2, p. 34.
[2] Kilty, pp. 30, 31.
[3] Kilty, pp. 38–41.

presumed he selected that payment which offered him the largest actual returns.[1] Rates similar to the above were allowed to holders of 50 acre lots. In 1657 the proprietary instructed Governor Fendall to grant land to new comers,[2] at the annual rental of one shilling for every fifty acres. The quit-rents ceased upon the overthrow of the proprietary government, as the landed property of the inhabitants became allodial freeholds, and the proprietary lost his agrarian as well as his political rights.[3]

In addition to the quit-rents, the proprietary received certain fines and fees, as caution money, composition money and alienation fines. No revenue from caution money was received until after the death of the first proprietary. According to his conditions of plantations no lands were sold, but only granted to actual settlers. Charles, the second proprietary of the province, by an ordinance of the year 1683, allowed any person to purchase land in the province to any extent. The caution money or purchase money did not relieve the holder of the usual quit-rent. Along the seaboard the caution money was one pound of tobacco per acre, in the

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[1] As there existed in the province, during the first century, a scarcity of English gold and silver coins, we find that the payments in pounds sterling were commuted to payments in tobacco, the legal money of the colony, at the rate of two pence per pound of tobacco, and at times in corn. See Archives, 1671, p. 286. Kilty, p. 72.

McMahon says that after the year 1733, quit-rents became payable in money, and continued so until they were abolished. McMahon, I., p. 175.

[2] Bozman, II., p. 701.

[3] Declaration of Rights, 1776, Art. 3, (in Hanson's Law of Md.,) an Act of Assembly of 1780, reads: "Whereas, since the present glorious revolution, the payment of quit-rent has ceased throughout the United States, and sound policy dictates that the citizens of this State should hold their lands on equal terms with the citizens of the other States;" resolved, that "the same be for ever abolished and discontinued." 1780, ch. XVIII. (Hanson's Law of Md.)

Henry Harford, the last proprietary of Maryland, was allowed £90,000 by the British government for the loss of his quit-rents and other property in Maryland. Mayer: Ground Rents in Maryland, p. 37-8.

inland parts it was two pounds of tobacco per acre.[1] The composition money was the consideration paid when the warrant was taken out. The alienation fines were an incident of feudalism and were transferred to Maryland with the socage tenure. No tenant could alienate his lands to another person without paying to the lord proprietary an alienation fine equal to one year's rent, at first payable in money, but in 1671 commuted to tobacco. No mention is made of alienation fines in Maryland until 1658, only two years before all incidents of the feudal tenure were entirely abolished in England.[2] In addition to fines and quit-rents the takers up of land were required to pay certain fees to the secretary of the province and other land officers for the issuing of patents, &c.[3] Toward the end of the proprietary government a famous contest arose in the province between the Governor and the Assembly, concerning the regulation of land fees, whether they should be determined by order in council or by an Act of Assembly.[4]

The proprietary for many years had the exclusive control of the granting of lands and of its conveyance and transfer. This power he assumed as the sole landlord of the province. Gradually, however, the want of carefulness and of strict integrity on the part of the proprietary's officers caused the people to feel uneasy about their landed property and to take steps to secure precise grants, accurate surveys and indisputable titles to their landed estates. During the Assembly held in 1637/8 no less than eleven land acts were enacted by the freemen, regulating the boundaries, assignment,

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[1] Kilty, p. 124–5. McMahon, p. 173. Mayer, p. 14. At times, the first proprietary seems to have accepted a money payment from a settler, in lieu of his entering his quota of immigrants as required by the conditions of plantations. See Kilty, p. 69, (note.)

[2] Statute 12, Chas. II., c. 24. An ordinance in council abolished alienation fines upon devises, in Maryland, in 1742. See McMahon, p. 175.

[3] Archives, 1638-9, p. 58, et al.

[4] Kilty, pp. 256, 257.

alienation, of freeholds and manors, but these acts together with all acts passed by this Assembly were vetoed by the proprietary. All questions concerning the taking up and the descent of land were henceforth settled by orders in council, or by commissions and instructions sent over by Baltimore.[1] By a commission bearing date September 5, 1642, the Secretary of the province, John Lewger, was authorized to enter and record all grants of lands, and to receive his lordship's quit-rents from the same. He was also appointed judge of all causes testamentary.[2] The office of Surveyor General, established in 1641, was the only life office under the proprietary government.[3] As a rule the tenure of office was during the pleasure of the proprietary. This officer was commissioned as the Surveyor General of all "castles, lordships, manors, forests, chases, parks, messuages, tenements, lands, woods, rents, revenues, possessions and hereditaments whatsoever of the lordship" within the province of Maryland.[4] He was therefore a personal officer[5] of the proprietary

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[1] The commission to Gov. Calvert bearing date April 15, 1637, authorized him to grant land under the great seal of the province, and to act as judge in all civil causes. John Lewger, one of the three councillors, was commissioned Secretary and ex officio, the register of lands. Bozman, II., pp. 572, 576. Foley: Records, &c. S. J., p. 365.

[2] Bozman, II., pp. 626, 651.

[3] Kilty, p. 65, (note.)

[4] Kilty, p. 65.

[5] There is no published record of instructions sent to the Surveyor General until the year 1671. This year, the Surveyor General, Baker Brooke, nephew to the proprietary, was instructed to survey at once all lands not known to be surveyed and report to the Governor if the proprietary was in any way wronged, also to call courts of inquiry and to resurvey all lands of the province once a year, examine all titles and see that all lands were held by lawful title and that the rents and services required of the landholders were paid, also see that he reserve eligible places for fortresses for the defence of the country, that he allow no planter more than fifteen poles along any water way, for each fifty acres of land, that he lay out at least two manors in each county for the use of the proprietary, and that he be careful to secure to his lordship the possession of all escheated and forfeited lands. See Kilty, p. 62.

as well as a public officer. He was authorized to commission deputy surveyors. The duties of the Surveyor General were important and various, but it is probable he was seldom called upon to survey castles, chases and parks.

The *modus operandi* of surveying a grant of land was probably the following. The examples cited are taken from Kilty. The settler having arrived in the province at once made public record of the time of his arrival and the number in his company.[1] Having secured an official certificate of his arrival, he was enabled to place on record at the Surveyor General's office, a demand for the quantity of land due by the conditions of plantations.[2] The site having been selected a warrant was directed by the Governor to the Surveyor General instructing him to locate and bound the land and place it upon record.[3] This was followed by a certificate of survey[4] issued by the surveyor, and finally by the patent.[5] These

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[1] "Came into the Province, 28th November, 1637, in the ship called Unity, of the Isle of Wight—Mr. John Lewger, who transported his wife, his son John, aged 9 years, Martha W., Ann P. and Mary W., maid servants, Benj. C., Philip L., Thomas F., and a boy Robert S., aged 12 years." Kilty, p. 67.

[2] "16th April, 1642.—Thomas Passmore hath entered upon record a demand of 200 acres of land due by conditions of plantations for transporting two men servants called Thomas P. and Richard W., in the year 1634, as he hath affirmed by his oath." Kilty, p. 69.

[3] "Mr. Surveyor: *9th October*, 1639.

"I would have you set forth a portion of Town land for Captain Giles Brent, Esq., containing to the quantity of sixtie acres or there abouts, lying nearest together about the Smith's forge, lately built by the said Giles Brent, and for soe doing, this shall be your Warrant.

[Signed] "Leonard Calvert."

[4] "4th December, 1639.—Laid out for Mr. William Lewis, one neck of land, lying upon the northern side of St. Inigoes creek, and bounding on the west with St. Andrew's creek; on the east with the freehold of St. Maries Hill, and on north with the town land of Robert Clark, as it is distinguished by marked trees, containing thirty acres or thereabouts.

"John Lewger," [Surveyor General.]

[5] "Cecilius, &c. Know ye that We, for and in consideration that William Britton, Gent. hath transported himself in person, his wife, one child and

simple proceedings were from time to time changed to suit the numerous cases of land grants that occurred in the province, as immigrants of various ranks and nationalities came to settle. For a half century, however, no important changes were made.[1]

In the year 1680, Charles, Lord Proprietary, erected in the province the department of government known as the Land Office. This step had been found necessary by the increased demands for land, the want of accuracy in many of the old surveys, the carelessness with which papers had been drawn up and by important changes in the conditions of plantations. For some years previous to the erection of this office the land administration had grown into a very complicated system and had been entrusted to the governor, governor and council, secretary, surveyor, the select land council, receiver general and chief agent of the proprietary. The Land Office survived the shocks of the many revolutions in the province and remains to-day an important department in the State administration. Several judges were appointed to administer the affairs of the Land Office, also an examiner general of plats and surveys, and surveyors and other land officers for each county.

The most important feature of the land system of Maryland was the granting of manors, and the accompanying privileges of local government. The incorporation of this

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three able men servants unto our said province of Maryland in the year 1637 . . . granted, enfeoffed, &c. unto the said William Britton, all that neck of land lyeing on Potomack River, &c. (ut supra in survey.) To have and to hold, &c., to the said William Britton and his heirs, &c., to be holder of our Manor of Little Britain, Yielding therefore at our usual receipt at St. Maries, fifteen shillings in money sterling, or one barrel and a half of good corn, &c. Given, &c., on this tenth of July, 1640."

[1] So well satisfied were the freeholders with the security and freedom of the land administration that it became the custom to employ the certificate of land rights as a medium of exchange. Kilty: Landholder's Assistant, p. 77, (note.) These certificates were like the French assignats, and probably the first *paper* currency used in America.

feature into the charter of Maryland[1] indicates great forethought on the part of Sir George Calvert, and shows that he had a keener knowledge of the wants of the people and of civil government than is usually credited to him. It was much better for his interests and for the economic growth of his province, that the demand for local government, instinctive in an Englishman, should come through the lord proprietor, than be asserted by the freemen as an inalienable right. A too active growth of local government in the province would have been dangerous to the stability of the proprietary government, and this growth was regulated and undue license was checked from time to time by the proprietary's methods of issuing manorial grants. It was a prudent step on the part of Edward I., of England, when he enacted the famous statute of *Quia Emptores*, for he was enabled to win over the common people to his side against the growing power of his lesser barons. But the enactment of the statute of *Quia Emptores*, by Edward, led to the gradual decrease of the intermediate lords, the squires, and to the aggregation of the people into two classes, the greater barons and the simple freemen. The re-enactment of the manorial grants led, in Maryland, to the formation of the very useful and at times important class of country gentry. Without the privilege of erecting manors in Maryland the proprietary would have had a very difficult political problem to solve in regulating the local government of the minor settlements of the province.

The old manors of England had two distinguishing traits, without which they became simple freeholds. The first was the right of the lord of the manor to hold a court-baron, and the other was the possession by the lord of a demesne land. Both of these incidents of the English manor were reproduced in the manors of Maryland. The land of the English manor was generally divided into three parts, varying in size

[1] The charter of Avalon, Newfoundland, did not provide for the erection of manors.

in different portions of the kingdom. The two essential divisions of the manorial land were into freeholds and demesnes. The demesnes, as a rule, were subdivided into the demesnes proper, or the part occupied by the manor-house and gardens of the lord, also into the part occupied by the villeins or tenants-at-will, and lastly, into the part occupied by the copyholders or customary tenants. The freeholds were occupied by the socage tenants. The third subdivision of the manors was the lord's waste, used both for public roads and for common pasturage for the lord's tenants. The manors of England frequently included warrens, forests, parks, chases, &c. The larger manors became small municipalities and grew into important, self-governing communities.[1]

The statute *Quia Emptores* forbade the subinfeudation of land, and hence indirectly prevented the erecting of any new manors, for it was essential to a manor that there be tenants holding of the lord. Hence the tendency was to diminish the number of mesne lords, and to increase the number of tenants-in-chief. It must necessarily increase the business of the king's judicial and executive officers. It might seem that it was very unwise in Calvert to neglect the *Quia Emptores* statute, and to re-establish in Maryland the effete English government of the thirteenth century instead of that of his own times. But, it must be remembered, the environment of the settlers of Maryland in 1634 bore a much closer resemblance to the conditions of affairs in England in the times of Edward I., than they did to the times of Charles I.

At any rate, the mediæval manorial institution, transplanted to Maryland, took kindly to the soil of the New World and became of vigorous growth. Partly by acts of assembly, partly by orders in council, and very largely owing

[1] According to De Laveleye, the manors are historically connected with the territorial divisions of the mark, and also with the parish or township. Primitive Property, ch. XVIII.

to the force of custom, the manors of Maryland became almost the exact reproductions of the manors of England. The manors of England contained generally at least 1,000 acres. The manors of Maryland must contain not less than 1,000 acres, but might include 10,000 to 15,000 acres. As in England, the manor was held of the lord's seigniory, or honor.[1] Demesne land must be reserved by the lord of manor.[2] The special privileges and prerogatives claimed by the lords of manors in Maryland were, trial by peers,[3] freedom from ignominious death,[4] summons by special writ to every Assembly,[5] right to keep stray cattle,[6] and right to escheat of tenements.[7] The chief privilege granted to each manor was the holding of court baron and court leet. The court leet, or the court of the people, was the petty criminal court of the manor. It took cognizance of the peace of the manor, and exercised jurisdiction over all the lord's tenants. The court baron was the civil court and had jurisdiction over the freeholders of the manor. It regulated the redress of nuisances and the settlement of agrarian disputes. In the court baron the freeholders were the judges, though the steward or seneschal of the manor presided. The court leet

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[1] Blackstone, B. II., ch. VI., Manors. Kilty, p. 93.

[2] "The sixth part of the land of every mannor which shall be granted by virtue of the said conditions, shall be for ever after accompted and known for the demesnes of every of the said mannors respectively, which demesnes shall be set forth in some one convenient place alltogether within every such mannor by distinct meetes and bounds for that purpose, and shall never be alienated, separated or leased" for a period exceeding seven years. Conditions of Plantations of 1648. Kilty, p. 39.

[3] Archives, 1638-9, p. 51.

[4] Supra, 1638-9, p. 71.

[5] Archives, 1638-9, p. 74.

[6] Supra, 1650, p. 271.

[7] Kilty, pp. 103, 104, 177. Lands vacated, deserted, forfeited, or without visible heirs, generally escheated to the proprietary and not to the lord of the manor. Several instances are on record where tenements escheated to the lords of manor, on the non-payment of rent on part of the tenants. Kilty, p. 103.

was held twice a year, the court baron was convened upon the call of the steward.[1]

In addition to the above manors, the conditions of plantations provided also for proprietary manors, and the so-called Indian manors. The surveyor-general was instructed to lay out in each county at least two manors of not less than six thousand acres each, for the personal use of the proprietary.[2] These proprietary manors, except the demesnes, could be leased out for terms of years, varying from one to three lives, or from twenty-one to ninety-nine years.[3] The location of some of the proprietary manors has been preserved.[4] The land records indicate that almost up to the Revolutionary War, large tracts of land were reserved for the use of the proprietary and erected into manors. In a letter dated 10th of April, 1764, the judges of the land office were notified by Governor Sharpe that the surveyor had been ordered to reserve for the proprietary ten thousand acres of land in Frederick county, beyond Fort Cumberland, to be erected into a manor.[5]

The most noted Indian reservation was the manor of Calverton. The entire tract contained nearly ten thousand acres,

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[1] Kilty, p. 107.

[2] Kilty, p. 63.

[3] Kilty, p. 97. Mayer, p. 28.

[4] "May the first, MDCL and V. (1665). Then came Jerome White, Esq., and Surveyor-General of this province, and requesteth that the mannors reserved for his Lordship hereafter menconed may be entered on record as followeth, viz.:

"In the county of St. Mary's reserved the Beaver dams and Choptico.

"In the county of Charles, Pangaio and Sackaio towns, for six thousand acres in each mannor of the best land about the said towns.

"In Calvert county, the manor of Patuxent.

"In Ann-Arundel county, The Ridge, with another mannor reserved, lying on the north side of the head of the Severn river, above a place called 'The Eagle's Nest.'" See Kilty, p. 99.

[5] Kilty, pp. 241, 263. The proclamations, warning settlers not to locate on any part of the province west of Fort Cumberland, were published both in English and German. Supra, p. 264.

all of which to be reserved for the six tribes of Indians, who sought the protection of the government, except one thousand acres for the proprietary's demesnes. As each Indian brave was allowed fifty acres, and each chief two hundred acres, the whole reservation would satisfy the demand of only one hundred and fifty Indians. The tenure was by copyhold, and the rental one shilling sterling, or its equivalent, for every fifty acres. The copyhold estates were to be held by as good and valid a title as if each estate had been granted under the great seal of the province.[1] Other Indian reservations were held by socage tenure, but entailed, and upon others the Indians were but tenants-at-will.[2]

The officers of each manor included, it seems, a tithingman or bailiff, a constable, and a seneschal or steward.[3]

The land system instituted by Baltimore tended to reproduce in Maryland, not the England of the time of the Stuarts, but the England of the time of King John and the Great Charter. But the province made as rapid progress in a decade as the mother country did in a century. The proprietary, the lords of manors and the freeholders bear an analogy respectively to the king, the barons,[4] and the gentry. The Indians, slaves and redemptioners may be compared to the villeins and serfs, and the freemen of the counties and of St. Mary's city, to the free inhabitants of the cities and free boroughs. The geographical subdivision of the land into counties, hundreds, manors, and subsequently into parishes and towns, bore a striking resemblance to similar institutions in England. It would not be difficult to trace a

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[1] Bozman, II., p. 676.

[2] In 1799 the Choptank Indians had dwindled down to four individuals. The State allowed each one ten acres of cleared land and ten acres of wood land. Kilty, p. 358.

[3] Archives, 1638-9, p. 54. Bozman, II., p. 138. Old Maryland Manors, Series I., VII., p. 34.

[4] The title of *baron* was originally applied to all freemen in England. Blackstone, Bk. II., ch. VI.

resemblance between the Assembly, composed of one house, and limited almost entirely to land owners, and the imperfect Parliaments of King John and his son, Henry III. In the provincial Parliament of Maryland we find represented or at least summoned, the lord of the manor, the clergy,[1] the burgess representing the hundred, and the delegates from the city of St. Mary's. The governor's council, composed of land owners, and similar to the privy council of the English sovereign, also sat in the Assembly and took part in its deliberations. During the first decade of the history of the province we find the clergy owning vast estates, withdrawing from the pale of the proprietary's authority and contesting strenuously against the jurisdiction of the civil law, and, fortified by certain recent bulls of the pope and by instructions received from the ecclesiastical superiors, endeavoring to hold themselves amenable only to the canon law. The three Jesuit fathers, Copley, White and Altham, summoned by special writ to the Assembly of 1637-8, declined to appear, two of them pleading sickness, and when their names were again called out in Assembly, one of the freemen made answer that "they desired to be excused from giving voices in this Assembly." Their excuse was accepted and no fine was imposed.[2] The exemption of the inhabitants of the province from the imperial taxation and also from the judicial administration of England also tended to make the institutional and constitutional history of Maryland develop in a direction parallel with that of England. But in England "the people"

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[1] Foley: Records, &c., III., p. 336. Johnson: Foundation of Maryland, p. 56. But Baltimore's legal contest with the Jesuits left an abiding impression upon the constitutional history of the province, and the clergy were, subsequent to 1641, not only not summoned to the Assembly, but have been forever barred from this privilege. McMahon, p. 449, (note.) Browne: Maryland, p. 57, (note.)

[2] Browne: Maryland, p. 55. Archives, 1637/8, pp. 2 and 5. Johnson: Foundation of Maryland (Md. Hist. Soc. Pub., No. 18), pp. 58, 71, &c. Foley: Records, &c., III, pp. 336-7.

consisted of freeholders in severalty, the gentry, or of the freeholders in common, the burgesses of the free cities and boroughs. In Maryland, however, for half a century, the privileges of citizenship were granted to some persons, neither freeholders nor burgesses, called freemen.

It was peculiarly fitting that the system of feudal tenure and administration first firmly instituted in England by a Bishop of Durham, Ranulf Flambard,[1] under the second Norman king, should find its latest development in the Maryland palatinate, the first of the proprietary provinces in America, and should here in the distant new world gradually wane away and perish centuries after the system had passed away from the soil of England. By statutory law the manor in Maryland, the most striking peculiarity of its land system, has become a thing of the remote past, but the diligent seeker may find here and there many evidences of the influence the institution exerted during colonial days.[2]

In connexion with the inquiry into the land system, it may not be unprofitable to consider whether freeholders alone were entitled to the elective franchise under the proprietary government. No question can be raised upon this point so far as the last century of the proprietary regime is concerned, but much discussion has arisen as to the status of the landless man during the early history of the province. In September, 1681, an ordinance of the proprietary was promulgated in which the right of suffrage was limited to freeholders, or to inhabitants having an equivalent personal estate.[3] These restrictions were retained until the province had become an independent state. The inference has been drawn from this ordinance that previous to this date the elective franchise and the right to sit in the Assembly had always been restricted to

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[1] See Freeman in Ency. Brit., Art. England, p. 303.

[2] "Vestiges of manorial rents and customs may be discovered throughout the State at this day." Mayer: Ground Rents in Maryland, p. 39.

[3] McMahon, p. 449, (note).

property owners, as it is a very rare occurrence and a somewhat dangerous political measure to disenfranchise free citizens. But the facts in the case indicate that in Maryland such a measure was actually carried out, and that during the administration of the first proprietary a freeman was not necessarily a freeholder, and also that certain freeholders (*e. g.* foreigners) were not necessarily freemen, *i. e.*, entitled to vote or sit in the Assembly. The latin text of the charter distinguishes between *liberi homines* and *liberi tenentes*.[1] Bozman came to the conclusion that the two expressions were synonymous, but in the second edition of his history he modifies his former statement and says the subject is "involved in some doubt and obscurity and the reader is to exercise his own judgment."[2] But the word *freemen*, and not *freeholder*, is alone used in the proceedings of the Assembly, in the references to its constituent members. Among the freemen mentioned by name in the records of the Assembly proceedings, the great majority are designated as *planters*, but a number of handicraftsmen, as carpenter, cooper, brickmason, etc., are specially referred to,[3] implying that the free subject of England did not lose his suffrage in the agrarian province of Maryland.[4]

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[1] Charter of Md., sections 7, 8, 21. Baltimore was authorized to ordain and enact laws "cum consilio assensu et approbatione Liberorum Hominum ejusdem Provinciæ." Charter of Md., section 7. But he was allowed to make ordinances in his own right in case any sudden emergency should endanger the province "before the freeholders of the said province" (Liberi tenentes dictae Provinciae) could be convened. Charter, sect. 8. The charter further stated that the freeholders and inhabitants (Terrae tenentes vel incolae) of the colony should owe no allegiance to Virginia. Charter, section 21.

[2] Bozman, II., p. 48, (note.)

[3] Archives, 1637/8, pp. 2, 3, 4; also 1642, p. 170.

[4] An unfree mechanic, however, could only obtain freedom and the right of suffrage by the ownership of a freehold. Many of the white artizans, probably indentured servants, redemptioners, or convicts, were bought and sold in a manner apparently similar to the purchasing of black slaves. In his instructions to his treasury commissioners in 1641, Baltimore ordered "that all my carpenters and other apprentice servants there be sold forthwith for

In a remonstrance drawn up by the lower house in 1666, the distinction between freeman and freeholder is sharply drawn, and reference is made to the "labours" of the freemen and the estates of the freeholder.[1] A bill of the upper house, of the same period, alluding to the freeholders, affirms that "they are the strength and only strength of the Province, not the Freemen, It is their persons, purses and stocks must bear the burthen of the government, both in peace and war, and not freemen who can easily abandon us."[2] If additional evidence is needed to prove that the term freeman was not limited to freeholders, it is furnished by the case of Mr. Thomas Weston, who petitioned to be excused from sitting in the Assembly, claiming he was no freeman because he had no land nor certain dwelling here." But the Assembly decided he was a freeman and must attend the deliberations, or be fined.[3]

McMahon is of the opinion that, according to the charter, only freeholders were obliged to be summoned to the Assembly, but that the proprietary, of his own will, extended the suffrage to the free residents, irrespective of property qualifications.[4] But Mr. Weston, mentioned above, would have been spared service in the Assembly if this interpretation was correct, for, although Calvert might have permitted the landless freemen to deliberate in the provincial Assembly, he was not authorized to make the attendance compulsory. The

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my best advantage, which I understand will yield at least 2,000 lb. tobacco a-piece, although they have but one year to serve especially if they be carpenters." Bozman, II., p. 629.

[1] Archives, 1666, p. 44.

[2] Supra, p. 47.

[3] Archives, 1642, p. 170. Stubbs makes the point: "it is of the greatest importance in all our early history to remember that attendance at courts and councils was not regarded as a privilege, but as a burden; *suit* and *service* were alike onerous." Stubbs: Con. Hist., I., p. 377, (note.)

[4] McMahon, pp. 443, 444. Judge Brown (of the supreme bench of Baltimore,) concurs with McMahon and says that "all freemen were not, as such, entitled by virtue of the charter, to vote for delegates to the General Assembly. If they had been so entitled none could have been excluded for want of property." Brown: Civil Liberty in Maryland, p. 9. (note), 12.

settled policy seemed to have been to allow all freemen and freeholders to sit in the Assembly as delegates, and to have the right of suffrage, and though attendance at the early Assemblies may not have been compulsory, yet those specially summoned, freemen or land owners, must personally attend or be mulcted.[1] Bozman is in error when he says that a Nicholas Gwyther "petitioned to have vote in the house as a *freeman* of the province." Gwyther petitioned simply for his freedom and not for right to sit in the Assembly.[2]

The elective franchise in Maryland, although broad enough previous to 1681 to include all *free men*, did not include *free women*. Mistress Margaret Brent, a noted lawyer and military commander in the province, asserted her right to sit in the Assembly of 1648, both in her own name and as attorney to the proprietary. The freemen recognized her great services in saving the province during Ingle's rebellion, but were not prepared to grant her all the civil rights of a freeman. Governor Greene peremptorily refused to allow Mrs. Brent a seat in the house, and she, in turn, protested against all the proceedings of the Assembly.[3]

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[1] "The freemen bownd to attend the Assembly appeared, except M[r] ffenwick, M[r] Thorneborough, M[r] Brookes and George Saphyer."

"Summons to George Saphyer to be att the Assembly forthwi[th] uppon sight." Archives, 1647/8, p. 215.

[2] Compare Archives, 1647/8, p. 220 with Bozman, II., p. 322.

[3] Archives, 1647/8. Kilty, p. 104, (note). Bozman, II., p. 323. Brown: Civil Liberty, p. 16, (Maryland Hist. Society). The Assembly of 1649, in a letter to Lord Baltimore, makes this remarkable statement about this estimable and strong-minded lady: "As for Mrs. Brent's undertaking and medling with your Lordship's estate here, (whether she procured it with her own or other's importunity or no) we do Verily Believe and in Conscience report, that it was better for the Collony's safety at that time in her hands, than in any man's else in the whole Province, after your Brother's death; for the Soldiers would never have treated any other with that civility and respect, and though they were even ready several times to run into mutiny, yet she still pacified them till at the last, things were brought to that strait that she must be admitted and declared your Lordship's Attorney by an order of Court (the copy whereof is herewith inclosed), or else all must go to ruin again, and then the second mischief had doubtless been far greater than the former." Archives, 1649, p. 239.

II.

THE HUNDRED.

On the Eastern Shore of Maryland, in Talbot county, there is an election district which for many years has borne a name whose origin has been a mystery to most of the inhabitants, viz., the district of *Bay Hundred*. The name of this county subdivision is all that survives of an institution which dates back to the very beginning of the history of the State. The first civil divisions of the infant settlement were called *hundreds*. Before the county, the town, the manor, or the parish were instituted or erected, the hundred had been adopted by the freemen of the province as the territorial division most suitable to them in their peculiar isolation in the New World. It is an interesting coincidence that the colonists of Maryland were led to adopt an institution identical, at least in name, with the institution first framed by bands of Angles and Saxons, upon their arrival in old England, a thousand years before.[1] The institutional resemblance in the two widely separate countries may have been purely accidental, but they illustrate the tendency of peoples in the same stage of development, or when placed within the same environment, to adopt for their political machinery, the

[1] "It is very probable, as already stated, that the colonists of Britain arranged themselves in hundreds of warriors; it is not probable that the country was carved into equal districts. The only conclusion that seems reasonable is that, under the name of geographical hundreds, we have the variously sized *pagi* or districts in which the hundred warriors settled." Stubbs: Const. Hist. of Eng., I., ch. 5, par. 45.

same or similar institutions. This is especially true of the Teutonic races.

The hundreds of Maryland were in origin a geographical division, and so they continued to remain. A personal hundred, as an association of a hundred families, or a hundred soldiers, was unknown in the history of the province. But although the oldest civil division in the province was the hundred, this term was not applied to the settlement at the mouth of the Potomac until several years after the colony had been seated. The name first applied to that part of Maryland where the colonists first settled was Augusta Carolina.[1] The undefined territory comprised within its boundaries was subject to no special form of local government. To all purposes the governor of the little band of settlers was for the first few years an almost absolute monarch. The commissions issued by the lord proprietary gave the governor, Leonard Calvert, an almost unrestricted legislative and executive power. The proclamations of the governor were the only laws binding upon the colonists. This form of arbitrary government, however, could not continue. It was neither desired by the governor nor satisfactory to the settlers. But it is not improbable that even before a regular assembly of the freemen was held the governor had frequent conferences with the chief men of the settlers. Of these informal conferences no record has been kept. It is very improbable that respect was had to geographical differences in the selection of men to these early councils. It was not until writs were issued in legal form and through regular officers to the freemen to meet in regular assembly that the necessity was felt for the separation of the province into civil districts of some kind. These original election districts were termed *hundreds*.

[1] "The thirty miles of territory, immediately around the place, which had been faithfully purchased from the natives, received the name of Augusta Carolina, in honor of the reigning King, Charles I." De Vere: Romance of American History, p. 205; also, Father White: Relatio Itineris in Marylandiam.

The settlers of Maryland landed near the present Point Lookout, in March, 1634 [N. S.]. In February, 1635 [N. S.], a general assembly of the freemen was held and certain laws enacted.[1] But the records of this Assembly have been lost and nothing is known concerning representation in it. There is no evidence of any territorial subdivision of the settlement at the time of this Assembly. The first regular Assembly of the freemen, of which any proceedings have been preserved, was convened on January 25, 1638. At this Assembly all of the delegates, except those summoned by special writ, are designated by the hundred in which they had their residence.

The first and most important use made of the hundred of the province was evidently for the purpose of registering the inhabitants as members of the community, and of recording the domiciles of the freemen. The hundred was laid out, bounded and named by proclamation of the governor. Before issuing the proclamation it is probable the governor conferred with his council, composed at first of three or four freeholders of good standing.[2] At the opening of the Assembly, held at St. Mary's, January, 1638, there were freemen from the hundreds, Mattapanient, St. Mary's, and St. George's, not including the Isle of Kent, which was now virtually a hundred. St. Michael's hundred was soon afterwards created

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[1] See Archives, 1637/8, p. 23.

[2] "Then stood up Henry Bishop (in the Assembly) and exhibited himself Burgess for Saint Leonard's hundred, and pleaded that it was acknowledged to be a hundred upon the probate of a will, whereupon he was answered that it was not yet created a hundred and last election of Burgesses they were joyned to Mattapanient hundred, and that they had no writ to elect Burgesses, and therefore their election not legal and their assembly to that purpose unlawful." Md. Archives, 1642, p. 130.

In the commission issued by Governor Calvert to Robert Vaughan, bearing date of January 5, 1638 [N. S.], the preamble begins: "Whereas, the west side of St. George's river is now planted by several inhabitants, and is thought fit to be erected into a hundred, by the name of St. George's hundred," &c. Vaughan was appointed the constable of the hundred See Bozman, II., p. 45.

and the name of Mattapanient hundred changed to Conception hundred.[1]

In the commission to Capt. Evelin touching the General Assembly, he was directed to appoint a "generall assembly of all the freemen of this province."[2] The meeting was a pure democratic one. But although all the freemen were privileged to attend, all those summoned were not obliged to be present in person. Those freemen who could not attend were allowed to send a deputy or deputies to represent them.[3] No directions were given concerning the territorial apportionment of these deputies. But before the opening of the session of 1638/9 an order in council made the hundred the election district. This Assembly was composed of two or more burgesses elected by the freemen of Kent, of five *gentlemen* summoned by special writ, and of the burgesses elected to represent the freemen of the several hundreds of St. Mary's county. Summons was directed to all the freemen of the different hundreds to appear before the Secretary of the province at the time and place specified, and to make choice of their deputy or deputies.[4] The returns of election made

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[1] Archives, 1641/2, p. 114.

[2] Supra, 1637, p. 1.

[3] Capt. Evelin was directed "to endeavour to perswade such and so many of the said freemen as you shall thinke fitt to repair psonally to the said assembly at the time and place prefixed; and to give free power and liberty to all the rest of the said freemen either to be pñt at the said assembly, if they so please; or otherwise to elect and nominate such and so many persons as they or the maior part of them so assembled shall agree upon to be the deputies or burgesses for the said freemen, in their name to advise and consult of such things as shalbe brought into deliberation in the said assembly." Archives, 1637, p. 1.

[4] A memorandum of election returned by the secretary reads: "14th of February, 1638 [o. s.], this day came before me Richard Garnett, Senior, Richard Lusthead, Anum Benum, Henry Bishop, Joseph Edlo, Lewis Freeman and Robt. Wiseman and chose for the burgess of the hundred of Mattapanient Henry Bishop, and have given unto him full and free Power for them and for every of them to be present in their names at the next Assembly as their Burgess or deputy, and in witness thereof have hereunto sett their hands." Archives, 1638/9, p. 28.

by the Secretary indicate that the 7 freemen of Mattapanient hundred chose one deputy, the 14 freemen of St. Michael's hundred chose two deputies, the 17 freemen of St. Mary's hundred chose two deputies, the 20 freemen of St. George's chose one deputy, and the 50 freemen of Kent made choice of two deputies to represent them in the General Assembly.[1] There was no limit to the number of deputies to be chosen by the freemen of any hundred. The only check upon a too numerous delegation was the expenses of the deputies, which were borne by the freemen of the respective hundreds.[2] In those days the expenses of travelling to the Assembly and of lodging at the little town of St. Mary's were quite considerable.

Before the close of the session of 1638/9, a bill was introduced and finally enacted defining more sharply the rights of representation in the general legislative body of the province. The right to a seat in the Assembly was granted to lords of manors, to gentlemen summoned by special writ, and to hundred burgesses. Instead of the writ of election being directed to the freemen of the hundred, it was sent to the commander of the hundred, or, in his absence, to the high constable of the hundred, or, "in defect of a constable," to the sheriff of the county. The election was ordered to take place at some place in the hundred, and not, as hitherto, at the town of St. Mary's. The election was *viva voce* and took place before the chief officer of the hundred. Each hundred had the privilege of choosing any number of delegates. All the freemen

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[1] Archives, 1638/9, pp. 28–31.

[2] At the session of Assembly held in July, 1642, a committee of six members on ways and means was appointed. The house "gave the committee power to allow the acco[ts] of Burgesses and officers of this Assembly, and to assess the sums due from every hundred upon all the freemen of every hundred (not called by special writt) and appointed that such assessment entred upon record shall be a judgment to all respects, and that the sheriff shall collect the said leavys." The pay per diem of the burgesses was 40 lbs. of tobacco. Archives, 1642, p. 144.

and freeholders were summoned to take part in the election. But no freeman could come to the Assembly in his own right. The Assembly was to be composed only of delegates elected by the freemen and of the gentlemen summoned by special writ.[1]

The operation of this good law, tending so strongly in the direction of local self-government, was defeated by the veto of the Lord Proprietary. It is not stated on what grounds he could object to the bill.[2] He showed his wisdom, however, by incorporating in his subsequent proclamations summoning the Assemblies the main features of the bill passed by the Assembly of 1638/9. The number of deputies allowed in these proclamations to any one hundred varied from one to four; the polls of the hundred were designated in the proclamations to be held at some place within the hundred.[3] The freemen of St. Clement's hundred being a "small company in number" [7], were allowed to select Lieutenant Robert Vaughan as their deputy.[4] On the other hand, the freemen of St. Mary's, not being satisfied with one

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[1] The law reads: "And from henceforth such person or persons only so elected and chosen out of and for every hundred within this province (and such persons as shall be personally called by writt as afore) shall have a place, voice and seat in all or any Generall Assembly, hereafter to be held within this province." Archives, 1638/9, pp. 74, 75.

[2] The lord proprietary asserted his prerogative not only of regulating the meeting and composition of the Assemblies, but also claimed the initiation of all laws. The latter privilege the freemen of the province refused to assent to, and after a short but decisive struggle the Assembly secured the right to initiate laws. But no objections were raised to the proclamation of the Governor, asserting that "the manner of summoning Assemblies within this Province is wholly left to the L^d^ Prop^rs^ discretion." See Proclamation, Archives, 1650, p. 259.

[3] The expense and inconvenience of making the capital of a colony the only polling place is well illustrated in the history of South Carolina. The historians of this colony claim that the revolution of 1719, by which the proprietary government was brought to an end, was largely due to the refusal of the proprietors to allow any polling place in the colony other than Charleston. Rivers: History of South Carolina, ch. 10.

[4] Archives, 1640, p. 89.

deputy, were allowed by the Governor, at their urgent request, to choose two burgesses.[1]

For a number of years, (as late as 1651) St. Mary's was the only county subdivided into hundreds. The other counties, Kent, Anne Arundel and Charles, were so thinly settled compared with St. Mary's that it was doubtless found inexpedient to subdivide them further.[2] When Cromwell's commissioners usurped the government of the province in October, 1654, the hundred representation was entirely swept away and the Assembly was composed of members chosen by the several counties. Two burgesses were allowed St. Mary's county, and probably the same number to each of the other counties.[3] After the surrender of the government to Lord Baltimore, March, 1658, no further reference is made in the Acts of Assembly to the hundreds. The writs of election are directed, not to the freemen of the hundred collectively, or to the constables of the hundreds, but to the sheriffs of the several counties.[4] But the hundreds still continued to be used as polling places. It is probable that the deputies were still chosen by hundreds and not by counties. In the proceedings of the Assembly, however, the members are spoken of as from this or that county.

The hundred and county delegates were called *burgesses* by resolution of the Assembly.[5] In writs, summonses and pro-

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[1] "The ffreemen of St. Maries hund^d^ earnestly request the Gov^r^ to giue them power of choosing 2 Burgesses, alleaging that hund^d^ to bee the ancientest hund^d^ & the first seated w^th^in this province under his L^ps^ gouernm^t^ who granted their request and desyre accordingly." Archives, 1650, p. 260.

[2] See Archives, 1650, p. 298, and 1650/1, p. 313.

[3] See Archives, 1654, pp. 339 and 340.

[4] Archives, 1659/60, pp. 381, 382.

[5] "The said several persons, so elected and returned as aforesaid, shall be and be called burgesses, and shall supply the places of all the freemen consenting or subsenting to such, their election in the same manner and to all the same intents and purposes as the burgesses of any borough in England, in the Parliament of England." Bozman, II., p. 599. The term

clamations the terms deputies, burgesses, delegates and representatives are used synonymously.

A second important use made of the hundreds of Maryland was in the collection of public revenues. The hundred was made the basis of the tax levies. Much of the proprietary's revenues arose from the quit-rents and monies deposited on the taking up of lands. Fines and customs duties supplied another portion. But the expenses of the civil list were largely met by a direct tax upon the inhabitants. This tax was collected in the hundreds, and by their officers. The lord proprietary, as the supreme land owner of the province, was entitled to the quit-rents from the leaseholds and freeholds for his personal benefit. But the expenses of his public officers were met by a public assessment levied upon all the property holders. This assessment was collected through the hundreds. The constable of each hundred was required to keep a record of all the inhabitants in his hundred, and especially a record of persons liable to be taxed. The persons upon whom a tax was levied were termed taxables and titheables.[1] Before the introduction of the system of levying a tax upon the taxables, it had been customary to levy a direct assessment upon every property holder, according to his estimated estate.[2] The tax commission which made the so-called levies was composed of one or more persons from each hun-

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"burgess" was also applied in Virginia to the representatives in the Assembly, "chosen from every town, hundred and plantation." Burk: Hist. of Va., I, p. 103. The Virginia Assembly was sometimes called "House of Burgesses." Chalmer's Annals, ch. III.

[1] By a law enacted in 1662, taxables included all males over 16 years of age, born in the province; all male servants and slaves over 10 years of age and all female slaves over 20 years of age. Archives, 1662, p. 449.

[2] "In the early days of the province the personal estate of the colonists was taxed by the Assembly for the defraying of public expenses, but the lands granted to them were not directly taxed, as they were considered sufficiently burdened by the payment of the quit-rents and alienation fines to the proprietary." Mayer: Ground Rents in Maryland, p. 21; also Bozman, II., p. 146; Archives, 1638/9, pp. 59, 60.

dred of the province, or from each county, not yet subdivided into hundreds. This commission met at St. Mary's town. The method of levying was generally by means of a poll tax.[1] The committee of six members appointed by the Assembly in 1642, were empowered "to allow the acco^ts of burgesses and officers of this Assembly, and to assess the sums due from every hundred upon all the freemen of every hundred (not called by special writt)."[2] Each hundred was assessed for the expenses of its own burgesses and for a proportionate part of the expenses of the general officers of the Assembly. A memorandum of the tax commission, referring to St. Mary's hundred, reads: "And the sum of 1,260^lb. [tobacco] was assessed upon the hundred for the payment of the said acco^t and charge and hazard of collecting it, and it was assessed to be levied of the persons and after the rates following, viz^t Elizabeth Beach, 30^lb., Mr. Howkins 30^lb.," etc. A similar assessment was levied upon each hundred.[3] There is no record what redress a tax payer had if he considered himself too highly rated. Probably he could appeal to the governor and council. A law of 1649 gave the inhabitants of the hundred the right of electing their two tax assessors.[4] In this law no reference is made to the tax assessors of the Isle of Kent. Probably in fiscal matters it was still regarded a hundred of St. Mary's county.[5] A law of the following year directed that the commission should consist of one or more assessors from each of the hun-

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[1] See Archives, 1647/8, p. 232; 1649, p. 237; 1650, p. 269; 1663, p. 506.

[2] Archives, 1642, p. 142.

[3] Archives, 1642, pp. 142, 146.

[4] "It is ordered by the authority of this psent Assembly that the governor shall issue out writts to the sheriff of St. Maries county to summon two inhabitants out of every hundred, to bee chosen by the hundred, to meete together at some time and place to bee appointed by the governor in October next and make assessment on all the inhabitants of each hundred of the charge that shalbe incurred this psent yeare." Archives, 1649, p. 238.

[5] Bozman, II., p. 48 (note).

dreds of St. Mary's, and from the counties of Anne Arundel and Kent.[1] The laws do not specify where the taxes should be paid, nor by whom collected. At a very early period, however, the sheriffs of the several counties were made the tax collectors, the taxes being made payable probably at the court house, or at the public ordinary. Certain special taxes, however, were not collected through the hundreds. The subsidy granted Baltimore in 1641 was levied in a unique way, but yet in a manner which had often been practiced in old England. The peculiarity of the tax lay in its assessment upon families, instead of upon the inhabitants in general of the hundreds. Every freeman, freewoman, and every servant, was taxed through some family. If any freeman refused to pay the tax advanced by the family in which he was assessed, he was held amenable to the law.[2] The assessments were to be paid at the plantation "appointed or well liked of in the hundred" by the collectors.[3]

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[1] Archives, 1650, p. 298; see also Archives, 1650/1, p. 313.

[2] "Where any house keeper or house keepers payes for any freeman or freewoman as belonging to his or her or their family, such house keeper or house keepers so paying may charge the said paym^t^ to the account of such freeman or freewoman or recover it by accou^t^ of debt, in which case a freeman or freewoman is to be judged such as are in covenant for wages or hyre for their work or service. . . . . And where it is uncertain to what family any artificer, seaman or other person having no certain abideing place doth belong, he shall be charged to that family where he had his last abideing." . . . . Any freeman arriving in the province before a certain date "shall be accounted to that family where he shall abide or sojourn for the greatest part of his abideing after such his comeing into the colony." Archives, 1641/2, pp. 123-4.

[3] It is interesting to find that the provisions of this temporary law, by which every taxable was assessed through some family, became part of the organic law of the province. A law enacted in 1719 reads: "It shall and may be lawful for any constable of any hundred, in any of the counties within this province, upon finding any such single person or freeman in their respective hundreds, who cannot procure some house-keeper within such hundred to give him in as a taxable, nor make appear that he is a resident, or taken as a taxable in some other hundred or county, to carry such person or freeman before the next justice of the peace for such county, who is hereby empowered and required to commit such person, or freeman,

The hundred continued to remain the fiscal district of the province, though the methods of levying the taxes varied from time to time. The tax commission, composed of the hundred and county assessors, still continued to meet at St. Mary's to levy taxes for the general expenses of the government. To meet the local indebtedness due for local improvements, &c., a new method was adopted. The constables of the hundreds were required to go to the "severall and respective houses in their hundred to enquire of the masters of the respective familyes after the number of taxables in each family." A list of all the taxables of the hundred was sent by the constable to the sheriff of the county, and another list was sent to the county court "there to be sett up." In case "any master, dame, or other cheife person of a family" refused to make out a full list of the taxables of the family, such person was liable to a heavy fine. The constable derelict in duty was liable to a fine of 500 lbs. of tobacco.[1] Previous to the enactment of this law of 1676 the constable was amenable to the governor, from whom directly or indirectly he received his appointment. The tax was collected by the sheriff of the county.

The hundred continued to remain the fiscal district of the counties probably even after the war of the Revolution. A record from St. John's Parish of Baltimore, bearing date, August, 1779, reads: "Ordered that the Register [of the Parish] procure from the Assessors of the several hundreds in this parish a list of the Parishioners' names."[2]

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into the sheriff's custody, until he shall procure some house-keeper to return him as a taxable, and be answerable for his levy." Bacon: Laws of Md., 1719, ch. 12.

The connexion of the individual of the hundred with the family, for fiscal purposes, in Maryland, is somewhat analogous to the relation of the individual with the tithing in England, for the maintenance of peace and the levying of taxes. See Stubbs: Con. Hist. of England, I., ch. 5.

[1] Archives, 1676, p. 538-9.

[2] Parish Institutions of Maryland, Studies I., No. 6, p. 41.

It is interesting to find that when the tide of revolution began to move southward in 1774-5, the expenses for arms, ammunition, &c., in Maryland, were raised in the several counties through the hundreds. The sum of £10,000 was levied by the Provincial Convention upon the counties, to defray for the armament of the counties. Immediately from St. Mary's to Frederick and Baltimore counties the freemen assembled in their respective hundreds to devise measures to collect this extraordinary assessment.[1]

The most interesting use made of the civil division of the hundred, and the one which connects it most intimately with the history of the hundreds of England was in connection with the militia of the province. According to the best informed historians, the hundreds, at least of England, were originally associations of a hundred warriors, or of bands of a hundred families, following the leadership of their chief. Bishop Stubbs is of the opinion that when the colonists of Britain had arrived in the territory, they had "arranged themselves in hundreds of warriors." He says it is reasonable to believe that "under the name of geographical hundreds, we have the variously sized pagi or districts in which the hundred warriors settled."[2] It was not for a similar purpose, however, that the institution was introduced in Maryland.[3] The settlers merely borrowed that civil division

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[1] The inhabitants of Baltimore county, at a meeting assembled in Baltimore town, Jan. 16, 1775, passed a number of stirring resolutions. Among others it was "Resolved, unanimously, That subscriptions be opened in each hundred in this county under the direction of the committees of the respective Hundreds, for raising contributions to supply the necessities and alleviate the distress of our oppressed brethren of Boston." Scharf: History of Md., II., 173.

[2] Stubbs: Con. Hist. I., ch. 5, par. 45.

[3] Many other theories, far less probable than that advanced by Stubbs, have been published by historians and others as to the origin of the term *hundred.* Sweet (Anglo-Saxon Grammar, p. 18) and Bosworth (Dictionary) say that *hund* in Anglo-Saxon seems originally to have meant 10. The suffix *ert* or *red* simply meant a stroke, as one would make in counting.

from old England which seemed best adapted to their new environment. It is true, however, that an analogy not altogether fanciful, might be drawn between the military basis of the hundreds of Maryland and of the hundreds of Britain. In each case the colonists were bands of freemen, in a hostile country, under the leadership of a chief possessed of extraordinary powers. In each case the colonists had determined to possess themselves of the soil of the aborigines. In each case the whole adult male population was subject to military duty at the summons of the *dux* of the band,[1] in Britain termed the caldorman, and in Maryland the Lieutenant General.

The peaceable disposition of the majority of the Indian tribes of Maryland tended to reduce very considerably their fear of any hostile invasion, and the military duties of the settlement were subsequently entrusted to a small number of freemen. These guardians of the public safety were known as the "rangers," and the "trained bands." The rangers were appointed by the governor without respect to geographical distinctions. The trained bands or the local militia were distinctly hundred organizations and in charge of hundred officers.

This theory would make the *hundred* and *tithing* almost synonymous terms.

One writer says hundred meant "a division of a county, perhaps so called from containing a hundred securities for the king's peace." Another writer says the term is probably due to the hundred "once containing an hundred manors." (Scott: Dictionary, London, 1755). Some writers see an affinity between the Latin *centum* and the German *zent* (name of the civil hundred). The word *canton* is said to have been related to *centum* and *zent* and Kante (German). Lenormant has a note upon the number *ten* as used by early Shemitic races. See Beginnings of History, 233 et seq.

A number of uses to which the tithing in England was put, as described by Stubbs, were identical with the hundred administration in Maryland; e.g., the police, fiscal, and the election purposes. See Stubbs: Con. Hist. I., c. 5, par. 39–45.

[1] In the first commission issued by Lord Baltimore for the government of the province, the governor was given "absolute authority about and in all matters of warfare by sea and land." Bozman, II., p. 572, note VI.

The first act of legislation referring to the public safety of the province, was the statute of March, 1638/9, entitled "An Act for military discipline." According to this enactment every householder was required to secure a "bastard muskett," "a pair of bandeleers," and ammunition for himself and each person of his house able to bear arms. A monthly inspection of each dwelling by military officers was ordered. "Upon any alarm every householder of every hundred" was required to send his quota of men, completely armed, "to such place as shall be appointed or notified by the commander or high constable or other officer of the hundred."[1] This good law was however vetoed by Lord Baltimore, not because of any objections to the provisions of the Act, but because of his refusal to recognize the right of the Assembly to initiate laws.[2]

Within a few years, however, an order in council was passed by which "trained bands" were organized in each hundred, in charge of regularly appointed officers. An act of Assembly of 1642 regulated the fees of these officers.[3] It seems from this act as if every able-bodied man must join the local militia of his hundred.

The inroads of the Indians upon the little colony towards the close of the year 1642 caused the freemen to take stringent measures to protect themselves from further danger. The Assembly ordered an expedition to be made against the "Sesquihanoughs" and other tribes. The Lieutenant General was authorized "to take out of every county or hundred within the Province the third man able to beare armes," to go upon the expedition. The several hundreds were required to furnish all necessary arms, ammunition and victuals for the use of the soldiers. An assessment was levied upon every householder and freeman. "And where it is uncertaine to

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[1] Archives, 1638/9, pp. 77, 78.
[2] Bozman, II., pp. 67, 94.
[3] Archives, 1642, p. 159; also 1642, p. 193.

what family or hundred any one doth belong, he shalbe charged to that family, wherein he had his last abiding at or before the time of the assessment." Any ammunition, victuals, &c., left unused after the expedition had returned, were distributed to the counties proportionally, and from the counties to every hundred, and from the hundred to particular persons, proportionally to their charge."[1]

An act of February, 1644/5, authorized the governor to keep a small standing army at "Pascatoway," but only for that year. An assessment of a barrel of corn or fifty pounds of tobacco was levied upon "every head able to beare armes," within the province, to furnish the garrison. The governor was authorized to appoint "one or two places in every hundred" to receive the taxes.[2]

The most explicit statute passed for securing the province against the restless savages which surrounded the settlements on all sides, was the act of 1649, and in this act the hundred stands out very prominently. A number of settlers had planted far up upon the Severn, many miles from the forts of Kent and St. Mary's, and additional safeguards against incursions of the red men were found necessary. This act allowed the freemen of each hundred to assemble together at the places selected by the chief officer of the hundred, and to adopt such measures as were found necessary "for the defence of each particular hundred." In case of danger the alarm was sounded by means of "rounders" of from three to five guns. The call to arms must be repeated by every master of a family by a salute of three guns, under penalty. The commander of the hundred was authorized to impose a penalty upon any one sounding a false alarm and upon any master not equipping his household as directed, or allowing any of his men to "go out of the limits of the plantation where he is

[1] Archives, 1642, pp. 196–7.

[2] Archives, 1644/5, p. 205. This act was passed at the time of Ingle's rebellion.

usually resident, either to church or upon any other occasion whatsoever without his arms well fixed and a sufficient quantity of powder and shot about him." The sounding of the alarm from hundred to hundred, in case of invasion, is suggestive of the pursuit of a thief, from hundred to hundred, upon the "hue and cry" of the hundred constable.[1]

The Commonwealth Commissioners, in 1654, seem to have discarded the hundreds as a civil and military division, and directed that officers be appointed in each county to take "view of armes" and to train the inhabitants in military tactics.[2] But after the restoration of the government to Lord Baltimore, the hundred was again made the basis of the local militia. A statute of 1676 authorized the governor to appoint "two sufficient persons in every hundred to impress all manner of provisions and other necessaries" for supplying the needs of troopers and rangers going out upon public expeditions.[3]

The hundred remained the basis of the military administration of the government throughout the entire history of the province. The militia and trained bands of the hundreds were disciplined by officers appointed and instructed either by orders in council or by legislative enactments. A law enacted in the year 1715 gives minute directions concerning the equipment, the duties, and the pay of the officers and the rank and file of the military bands.[4]

When the conflict of 1776 began in America, it was the hundreds of Maryland that responded to the "alarm" sounded

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[1] Archives, 1649, p. 253. This act is significant as being the first instance of local self-government allowed to the hundreds; the equipment of the hundred militia being decided by the "major voice of the freemen." It was in this year, 1649, that the "Act of Religion" [Toleration] was passed. The Assembly at this time seems to have been controlled by the Puritans of the Severn.

[2] Supra, 1654, p. 347.

[3] Archives, 1676, p. 499.

[4] Bacon: Laws of Md., 1715, ch. 43.

by the towns of Massachusetts, and that echoed the news to the counties of Virginia and the parishes of Carolina. The veterans of the Indian wars and the raw recruits of the militia by common instinct gathered together in their respective hundreds to answer the call of their New England comrades. The newspapers of the times contain frequent notices of these hundred meetings. One account reads: "this day the inhabitants of Elk Ridge Hundred in Anne Arundel county met, formed themselves into a company, and chose their proper officers, being of opinion that a well-regulated militia will contribute to the preservation of American liberty."[1] But though the popular will was voiced in the hundreds, official action upon the war was taken by conventions of county delegates, as in the appointment of committees of safety, &c.

The most complete hundred organization in the province was the so-called "Ile of Kent," or as officially termed "Kent Hundred." The distance of the island from the settlement upon the Potomac, the struggle occasioned by the refusal of Claiborne to surrender the island to Calvert, and the importance of the Kentish settlement as an Indian factory, combined to magnify Kent into an importance almost equal with the settlement at St. Mary's. An Act of Assembly passed at the session of 1638/9 enacted, that "the island, commonly called the isle of Kent, shall be erected into a hundred, and shall be within the county of St. Marys (until another county shall be erected of the eastern shore, and no longer) and shall be called by the name of Kent Hundred."[2] This act, together with all the acts of this session, was repealed by the Lord Proprietor, but the provisions of the bill seem to have been largely incorporated in subsequent orders in council. The statute enacted that the chief officer of Kent should be termed "commander." This term was used by the Lord Proprietor in the commission issued in February,

[1] Scharf, II., p. 169 (note): Maryland Gazette, 1775, 1776.
[2] Bozman, II., p. 607, note XXXI. Archives, 1638/9, p. 55.

1639/40, appointing Mr. Giles Brent, "commander of the isle of Kent."[1] The commission did not recognize the island as any special civil division, but it did not regard it as a county. The commission issued in a previous year, (February 9, 1637/8) appointing three gentlemen "to be justices of the peace within the said island, to hold a *court-leet* in all civil actions not exceeding 1,200 lbs. of tobacco; and to hear and determine all offences criminal within the said island, which may be determined by any justice of the peace in England,"[2] would imply that the governor's council regarded Kent as a hundred. The commissions issued from time to time to the commanders of Kent, gave them a range of powers in some respects scarcely inferior to those possessed by the governor of the province.[3] The commander was, in fact, a deputy governor. He was the chief magistrate of the district, and its military chieftain. He held court, levied taxes and gave judgment in civil and criminal cases. He was assisted by a council of three gentlemen.[4] Kent was, however, an anomalous district, and while not yet raised to a county, it had advanced beyond the ordinary hundred. It is not definitely known when Kent was formally erected into a county, by order in council. An order of the Assembly of 1642 alludes to it incidentally as a county.[5]

It has been seen that the hundred was a very important civil division in the early history of Maryland. It was essentially the fiscal, the military and the election district of

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[1] Bozman, II., p. 614.

[2] A *court-leet* was a court of record, held annually within a manor or a hundred. It had jurisdiction both in criminal and civil matters. See Abbot: Law Dict., I., p. 315.

[3] Bozman says the term "commander" was borrowed from Virginia. See Bozman, II., p. 44, 138 (note), and Burk: Hist. of Va., I., p. 282. When Gov. Calvert was about to depart from Maryland, in 1642, he appointed Secretary Lewger his deputy, and made him "commander of St. Mary's County." Archives, 1642, p. 202.

[4] Bozman, II., p. 614.

[5] The passage reads: "and the sum of 2944lb. [tobacco] was assessed upon the County [Kent] for the payment of its burgesses' account."

the province.[1] The "taxables," the "trained bands" and the "burgesses" were terms particularly applied to the hundred. In a sense there is an identity in aim in the services rendered to the State by the tax-payer, the militia and the legislator. It is true that in modern times there is a diversity of opinion as to these three services. The former is generally regarded as a burden, the latter as an honor, and the other service as a source of amusement or recreation. But in the early history of new settlements, each of these three services, paying taxes, bearing arms, and making laws, is regarded as a burden and a duty. We may regard the hundred of Maryland, then, as that civil division of the province through which the government received the services of the freemen; these services were rendered either in labor, in kind, or in counsel. It will be found that the counties of the province became the administrative and the judicial districts.

Incidentally the hundreds were sometimes employed for other purposes than those above mentioned. It was in the hundreds, as was the case with the towns or townships of New England, that the popular will found expression. It has been seen how effectively they were employed during the Revolutionary war in the raising of the supplies to carry on the war. These hundred meetings were, in fact, "town-meetings" of a most democratic type. Taxes were levied, committees appointed, resolutions adopted and petitions framed. "Suspects" were put under surveillance by the hundreds, and obnoxious citizens driven from the district. The same democratic spirit in the hundreds was witnessed on previous occasions. We have seen that at a very early period of colonial history, the freemen met in their respective hundreds to frame laws upon the defence of the province; the resolutions being enacted by the "major voice of the freemen."[2]

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[1] There is no instance of the hundred as a judicial district; the hundred court is mentioned a few times in the earliest records, but no account of their proceeding, if ever held, has been preserved.

[2] Archives, 1649, pp. 253-4.

We find the freemen of the hundreds meeting from time to time to petition the Assembly,[1] or to send an address to the English sovereign.[2]

The officers of the hundred were generally appointed by the governor or the council. But, at times, the pay of these officers and their duties were regulated by Acts of Assembly. The officer peculiarly belonging to the hundred was the constable. He survived every revolution in the palatinate and is noticed many years after the overthrow of the proprietary government. An Act of Assembly, of March, 1638/9, directed that the commander of each hundred should appoint annually at "the first hundred court in every hundred held after Michaelmas," a high constable of the hundred, "to execute all precepts and warrants to him directed," and to have the same power and authority as "a high constable of any hundred in England hath or ought to have within his hundred by the law or custom of England."[3] The lord proprietary repealed this enactment as it infringed on his prerogative of initiating laws and of appointing the executive officers of the province. The office of the high constable, however, already existed previous to this Assembly. Among the burgesses sitting in the Assembly of 1637/8 was "Serg^{t} Rob^{t} Vaughan, highe constable of St. Georges hundred."[4] The high constables continued to be appointed by the governor. They occupied the same position in the hundred as the sheriffs did in the county. They were in reality under-sheriffs. The writs of election directed to the high constables were couched in the same words as those directed to the sheriffs of the county.[5]

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[1] Archives, 1676, p. 498.

[2] Peabody Calendar of State Papers (Md. Hist. Soc.), 1688, Oct. 22.

[3] Archives, 1638/9, pp. 54, 55.

[4] Supra, 1637/8, p. 2.

[5] "These are to will and require you to assemble all the Freemen as you may of your hundred, at a certain time and place by you to be prefixed within the said hundred, and then and there to require them to make election of one or two Burgess or Burgesses for the next General Assembly," &c. A writ to high constable of St. Clement's hundred. See Archives, 1641/2, p. 115.

As the new counties began to be erected and the hundreds began to increase in number, the duties of the sheriff began to increase at the expense of his subordinate, the constable. The terms "constable" and "high constable" were, at first, synonymous, for we find Robert Vaughan called both the constable and the high constable of St. George's hundred.[1] In the later history of the colony these officers were called simply constables. At first their duties were specified in their commissions.[2] Gradually, however, they became the guardians of the peace of the hundred, or the petty administrative officers. We find them acting as census-takers of the hundred,[3] as engaged in the serving of writs, &c.,[4] or occupied as inspectors of corn, &c.[5] In some instances the hundred is called the "constablery."[6]

The most important duties of the constable related to his position as the keeper of watch and ward, the guardian of the public peace, the police officer of his district. A clause in an Act of Assembly, of the year 1661, reads: "You shall sweare that you shall well and truely serve his Lop. in the office of constable, you shall see and cause that his Lops. peace be well and duly kept according to your power, you shall arrest all such persons as in your presence shall comitt or make any ryott, affray or other breach of his Lops. peace, you shall doe your best endeavor upon complaynte to you made to apprehend all fellons, barrettors, ryotters or persons riotously assembled. And if any such offender shall make any such resistance with force, you shall leavy hue and cry and shall pursue them untill they be taken," &c.[7] The

[1] Compare Bozman, II., p. 45 and Archives, 1637/8, p. 2.

[2] In his commission as constable, Vaughan was specially ordered to make "diligent search and inquiry, for persons who furnish the Indians or savages with arms and ammunition." Bozman, II., p. 45.

[3] Archives, 1676, p. 538.

[4] Bacon, 1719, ch. 12. Archives, 1661, p. 410.

[5] Archives, 1654, p. 350.

[6] Archives, 1661, p. 410.

[7] Archives, 1661, p. 410, and Bacon, 1715, ch. 15.

form of this oath was probably copied from an English statute.

According to Alsop,[1] the office of constable in many hundreds was almost a sinecure. By Act of Assembly the constables were subsequently appointed by the justices of the county courts.[2] Among other petty officers of the hundreds were the tobacco viewers[3] or inspectors, assessors,[4] and road overseers.[5] At times the constable was called the sheriff's bailiff.[6]

The area of the hundreds in general is not positively known, but it is very probable they were much smaller than the subsequent election districts of the State.[7] It is possible that some of the present election districts are but the survivals in names and bounds of the old hundreds, but in many counties all of the old names of hundreds have disappeared and new names have been given to the districts; *e. g.*, in St. Mary's County, St. Inigoes is the only district bearing the name of one of the former hundreds. Cecil County, in 1807, is said to have had 15 hundreds and only 4 election districts.[8] It is somewhat peculiar that while in old England the parish was a subdivision of the hundred, the parishes of Maryland frequently comprised a number of hundreds.[9]

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[1] In one place he says, "here the constable hath no need of a train of Holberteers that carry more armour about them than heart to guard him." Alsop: "Character of the Province of Maryland," p. 48. (Anno 1666). There is no evidence that the order in council which directed the constable to whip Quakers to the bounds of his hundred was ever actually executed. See "Early Friends in Maryland," p. 8, (note).

[2] Bacon, 1715, p. 15.

[3] Archives, 1640, p. 97.

[4] Archives, 1649, p. 238. Ingle, Studies, I., No. 6, p. 41.

[5] Johnson, Cecil County, pp. 241–2.

[6] Bozman, II., p. 620.

[7] In 1775, Frederick County had 33 hundreds; at present it has 21 election districts. But the area of the county has been much decreased since the province became a State. Compare Scharf, II., p. 175, with Baltimore *Sun* Almanac, 1885, p. 61.

[8] Scott: Geographical description of the State of Maryland, p. 108.

[9] Parish Institutions of Maryland. Studies I., No. 6, pp. 2, 6, 32. Hanson's Laws of Maryland, Sept., 1770, ch. 18.

The term "baronie" at times met with in the old laws and records of the province, probably meant the hundred. The first subdivision of the counties of Ireland had been into baronies, corresponding according to some writers with the hundreds of England; but Spenser, writing in 1596, makes the county and barony of Ireland synonymous terms.[1] A law for the erecting of baronies in Maryland was enacted by the Assembly of 1637–8, but it was repealed. As this law was initiated by the freemen, it is not probable the feudal barony was contemplated.[2] Kilty says no baronies, at least in the feudal meaning of the term, were ever erected in Mary-

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In the year 1696 the Maryland authorities sent to the English Government a list of the hundreds and parishes of the province. There were in all eleven counties. The number of hundreds in each ranged from two in Cecil County to ten in St. Mary's County. Baltimore County was subdivided into five hundreds, Anne Arundel into six, and Talbot into nine hundreds. In the entire province there were 71 hundreds. The names given to the hundreds afford curious study. In St. Mary's County we read of Resurrection, Newtown and St. Mary's city hundred. Nearly all the hundreds of this county were designated by names of saints. Each of the eight hundreds of Somerset county is named after an Indian term. The vocabulary seems to have been exhausted in some counties, and we read of hundreds known as "the lower part of Nanjemoy parish," "south side of Gunpowder," "lower part of Kent Island Bay." The number of parishes is stated in the report to be 30. Prince George's county was divided into hundreds but no parishes are mentioned. Generally the parish bounds are given. In Cecil county there were two parishes and two hundreds; as the same names were given to each, probably the two subdivisions occupied the same area. But in most cases the parish included one or more entire hundreds, and portions of adjacent hundreds. Kent Island formed one parish. See Liber H. D., No. 2, pp. 46-53. (Md. Hist. Society.) Kent Island began its civil life as a plantation of the Old Dominion, Virginia. It became, successively, a hundred, county, and parish of Maryland, and is now an election district of Queen Anne county.

[1] Liber Hiberniae, VII., p. 374. Spenser: View of the State of Ireland, Dublin Ed. of 1809, p. 249.

[2] Archives, 1637/8, pp. 2 and 20. It may be urged against the view that the bill for *baronies* passed by the Assembly, and subsequently vetoed by the proprietary could not have meant *hundreds*, as understood in England, as this term was already in use as a civil division. But it is not improba-

land.[1] In the council proceedings there is mention made of a manor being located "in the baronie of St. Marys." The hundred of St. Mary's and not the county of the same name is probably intended.[2] The English barony was synonymous with the lordship and was a division of the hundred.[3]

It is interesting to note that although the hundreds have disappeared in Maryland, the term is still in use in Delaware, which for a half a century was claimed by the proprietors of Maryland as an integral part of their province. The name is employed there to designate the election districts. Scott, in his description of Maryland and Delaware, 1807, says the three counties of Delaware were subdivided into a total number of 23 hundreds. The census of 1800 is given by him in the hundreds. Baltimore hundred, Sussex county, Del., adjoins Worcester county, Md.

An Act of Assembly of the year 1824 gave the death blow to the hundreds of Maryland as a civil division. They had long ceased to serve the threefold purposes to which they had been put during the proprietary government, and had become simply the district of the constable. This officer had degenerated into a mere messenger and factotum of the county justices. He had long ceased to be the responsible and dignified gentleman mentioned by Bozman.[4] The law of 1824

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ble that the term hundred was used popularly before it had received legal sanction. Spelman, in his Glossary, published in England about the year 1626, says, "Baronia pro parte comitatus quam hundredum dicimus." See Bozman, II., p. 580.

The baronies proposed a generation later for South Carolina, by its proprietaries, throw no light upon the institution of the same name proposed in the Maryland Assembly. The Carolina barony contained 12,000 acres and was governed by a landgrave. Before a second barony could be erected, the first barony must contain at least 100 inhabitants. Rivers: Sketch of the History of S. C., pp. 349, 357.

[1] Kilty: Landholder's Assistant, p. 93. See also, Bozman, II., p. 580.

[2] See Bozman, II., p. 44, (note); also, Archives, 1650, p. 260; Kilty, p. 68.

[3] Spelman: English Works, Vol. II., p. 51.

[4] "Although the office of constable is now by us, and might be then in England, considered to be an office below the dignity of a gentleman; yet,

reads: "Whereas the boundaries of hundreds throughout this State, by vacating old roads, opening new ones, and other causes, are in a great measure obliterated and forgotten," it was enacted that the election district instead of the hundred should be the limit of the jurisdiction of the constable in serving and executing civil process.[1] From this time the hundreds of Maryland existed only in tradition and in unpublished records.

in the then situation of the province, (1638), it might with propriety be estimated as an office of honour." Bozman, II., p. 45, (note).

[1] Laws of Maryland, 1824, ch. 140.

III.

THE COUNTY.

When the colonists arrived at the mouth of the Potomac river, March, 1634, their first work was to lay out "the plan of a city, naming it after St. Mary." They next bought of the Indians thirty miles of land, and named the district Augusta Carolana. The form of government provided for this little tract of land in the wilds of America, girded by Indians and unfriendly Virginians, is uncertain; but it is probable that the governor of the band, being well acquainted with the contents of the charter of Maryland, and knowing that his brother, Lord Baltimore, was allowed in his province all the privileges of the bishop palatine of England, at once erected the settlement, subsequently termed St. Mary's, into a county palatine. The official titles borne by Governor Calvert and his administrative officers, bear a resemblance to the terms employed to designate similar officers of Chester, Durham and other counties palatine, of England. It is not until 1638, however, that we find the term "county" employed in the records.

On the eastern side of the Chesapeake lay a tract of land, which, like its namesake in England, was first to welcome the new race of Teutonic adventurers. Kent county,[1]

[1] Lambard, in his "Perambulation of Kent," London, 1576, gives an interesting and quaint account of the settlement, customs and legends of Kent shire, England. It is unfortunate that no history of Kent county, Maryland, has ever been compiled. One of its first high sheriffs, Francis

Maryland, had been settled and named by Virginians, while the founder of Maryland was still struggling with the cold and famine of Avalon; and as a part of Virginia it had sent burgesses to its early assemblies. But the peculiar privileges enjoyed by the people of Old Kent, Maryland, were soon withdrawn upon the arrival of Calvert's colonists, in 1634, and the seat of the white man's power in the province was transferred to the settlement on the western side of the Chesapeake. As St. Mary's hundred was the first organized political subdivision in Maryland, so St. Mary's county became the first district of the province to receive the name and exercise the powers of the English shire.

By the provisions of the charter Maryland was constituted a province.[1] This term is frequently employed by the lawmakers of Maryland as if this region alone had a right to the title; the other American settlements are constantly called colonies, but never provinces.[2] It is not improbable that Baltimore and his chief officers had in mind as their conception of a province those large and recent settlements in Ireland, known as the province of Ulster, etc. At any rate, the term first employed by the Assembly to designate the civil divisions of Maryland was not county, but barony, a term much used in Ireland. It is uncertain from the few data accessible what was actually conveyed in this term in Maryland, though it is very probable, the freemen contemplated, as we have seen, a hundred, rather than a county form of local government.

The first mention made of *county* was in January, 1638 (N. S.), in commissions issued by the governor.[3] The name

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Lumbard, was, perhaps, a relative of the famous author of the "Perambulation of Kent." Of the 23 counties of Maryland, but two, Baltimore and Cecil, names suggestive of the first proprietary, have had their histories published.

[1] Charter of Maryland, VI.

[2] Archives, 1650, p. 287.

[3] Bozman, II., p. 46 and note; and Archives, 1637/8, p. 2.

first applied to the settlement, Augusta Carolana, did not become the legal term for the inhabited part.[1] The freemen seemed to have been in doubt whether to regard the whole province as a county of Great Britain, or to regard the country as a distinct principality. The palatinates of England were all *counties palatine*, but in Ireland the term palatinate has been applied to a county, province and kingdom.[2]

As the population began to increase and to diffuse itself through Maryland, the term St. Mary's, at first applied to the Indian town of Yoacomaco which the settlers purchased, soon was employed to include outlying fields and commons, probably within the palisades; and in a few years it was given to the first hundred organized,[3] and subsequently, as in St. Mary's county, to the collection of four or five hundreds erected within the first few years. During the first decade, at least, St. Mary's county embraced all the inhabited part of the province, including the "isle of Kent,"[4] located about ninety miles distant from St. Mary's town, and nearly sixty distant from the present St. Mary's county.

Kent Island, around which cluster many notable events in the early history of Maryland, was named by Claiborne, known to the inhabitants of Maryland as "Claiborne the rebel."[5] It became a very important settlement and threatened to overshadow the more deeply rooted settlement at St. Mary's.[6] Its growing importance as a trading post, drawing many settlers to its shores, caused the governor to grant to its inhabitants many civil privileges. Although at first known

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[1] On a map of Maryland published in 1635, the term Augusta Carolana is employed to designate the county now known as St. Mary's. It is not employed on any subsequent map. See Hawke's reprint of "Relation of Maryland" (Md. Hist. Society).

[2] Gilbert Stuart's Sullivan's Lectures, pp. 199-203.

[3] Archives, 1650, p. 260.

[4] Archives, 1638-9, p. 55.

[5] Bozman, II., p. 584.

[6] The election returns for 1639 indicate that 54 freemen voted in St Mary's county and 48 freemen voted upon the Isle of Kent.

as Kent Hundred, its commander received powers almost as enlarged as those given to the sheriff of St. Mary's, and its court, nominally a hundred court, had as large a jurisdiction as the county court of St. Mary's. It was not recognized as a county, however, until the year 1642.[1] Like its rival on the Western Shore, Kent county also enlarged its boundaries so as to include the new settlements on the Eastern Shore. The boundary line was soon extended beyond the island itself, and advancing toward the mainland, it was gradually pushed more and more into the Indian territory girding the white settlements. Ingle's rebellion in 1644-6 seems to have checked the growth of Kent county; and the settlements of the Puritans on the Severn river proved an effectual barrier to the extension of St. Mary's boundary towards the north.

The growth in population and influence[2] of the Puritans at Providence, now Annapolis, made them conscious of their need of more local power, and in the same year in which the Puritans reached their zenith in the politics of England, 1649-50, their brethren in Maryland were organized into a distinct county, making the third county recognized in the province. The Puritans called their county Providence, and so it was known for some years, but this term gradually gave

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[1] Baltò. *Sun*, May 30, 1882. Bozman, II., p. 246.

[2] The Proceedings of the Assembly for the years 1649 and 1650 indicate very clearly to what a height the Puritans of the Severn River had arisen. It was during the session of 1649, that the Assembly sent a letter to the Proprietary, in which they asserted their privileges in humble yet positive terms; and during this session also the well-known "Act of Toleration" was adopted. The Puritans, in 1649, had been regarded as residents of St. Mary's county, but in 1650 the settlement at Providence was recognized by Governor Stone as a distinct civil division, and he granted them the right to send two delegates to the Assembly. It is noteworthy that one of these members from Providence was elected Speaker of the Assembly of 1650. During this session a number of bills reflecting the doctrines and usages of the Puritans were passed by the Assembly.

The Puritan Commonwealth at Annapolis is the subject of a special research now in progress and in the hands of Daniel R. Randall, of Annapolis and of the Johns Hopkins University.

way to the present name, Ann Arundel, though not without a protest from the Puritans themselves.[1]

The first three counties of Maryland, St. Mary's, Isle of Kent,[2] and Ann Arundel or Providence, represent certain important phases in the historic growth of the province. They became the centers of different influences, and much of the subsequent dissensions in the Assembly can be traced to delegates from some one of these counties. St. Mary's became the Catholic stronghold, Ann Arundel became the seat of the Protestant influence,[3] while Kent Island, though professing full obedience to the proprietary rule, after the overthrow of Ingle, continued for years to be an isolated, semi-independent settlement, and became the seat of several subsequent revolts. An early record mentions "Kent County, West Indies."[4]

The Act of Assembly of 1650, erecting, bounding and naming Ann Arundel county, was a strong assertion of privilege on the part of the burgesses. The erection of civil divisions in the province was a right belonging exclusively to the proprietary or to his chief executive, the governor and council. The counties were generally laid out and bounded by orders in council, but, as in the case of Ann Arundel county,

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[1] Archives, 1650, p. 260; 1654, pp. 341, 345; 1658, p. 369.

[2] Kent Island was erected into a county, and known as the Isle of Kent County, or Kent County. In after years, however, the term Kent County was restricted to a part of the mainland, the present Kent County; Kent Island became in 1695 a part of the present Talbot County, and in 1707 was joined to Queen Anne County. McMahon, p. 83; Bacon, 1705, ch. 3.

[3] The State capital was subsequently removed from St. Mary's town, St. Mary's county, and located at the Puritan settlements on the Severn river, now known as the city of Annapolis.

[4] See communication in Balto. *Sun*, May 27, 1882. In 1652 the inhabitants of Kent Island, probably instigated by Cromwell's commissioners, refused to regard themselves as part of the Province, and by the term Maryland they designated the settlement only at St. Mary's. Hanson: Old Kent, p. 22.

this power was at times asserted by the Assembly.[1] Kent county was erected by an order in council, but the time is not known. The term "Kent County" is found in the records as far back as the year 1642. It first occurs in the Acts of Assembly in 1648.[2]

A very characteristic and yet a very petty act of Cromwell's commissioners in Maryland during their regime from 1654–1658, was the tampering with county names and county boundaries. Several additional counties had been erected by orders in council, so that in 1654 the number had increased to four or five, viz., St. Mary's, Kent, Ann Arundel, Charles, and probably Calvert or Calverton.[3] The commissioners gave the name of Providence to Ann Arundel; St. Mary's county lost its religious name and became known as *Maries* county; Charles was a name too suggestive of royalty and the county was called Patuxent or Putuxent. Kent county alone retained its old name.[4] The name "Maries" was found too popish for the Puritans and it was banished to make way for the name Potomac. The counties in 1654 were called by the Assembly, respectively, "Providence," "Kent," "Putuxent" and "Potomack."[5] The old names, however, were resumed upon the surrender of the government to the proprietary in 1658, except Charles county, which continued to be known as Calvert or Calverton county.[6]

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[1] In the records of the Assembly of 1650, Ann Arundel county is mentioned some time before the Act of Assembly was passed so naming it. It is not improbable that the Act of Assembly simply repeated and emphasized an order in council. The retention of the name "Ann Arundel" was probably due to the influence of Gov. Stone. Archives, 1650, pp. 273, 280-283, 291, 292.

[2] See Archives, 1648, p. 230; also transcripts of old records in communications to Balto. *Sun* of Aug. 23, 1881, and May 27 and 31, 1882. Liber C. B., p. 92, (Md. Hist. Society).

[3] Archives, 1650/1, pp. 312, 313, and 1658, p. 369.

[4] Archives, 1654, pp. 341, 345, 347, 354, 363. McMahon, pp. 80, 81, 84.

[5] Archives, 1654, pp. 355-356.

[6] Archives, 1658, p. 369.

After the proprietary had secured a firm hold on the civil administration of the province, upon the accession of Charles II. to the English throne in 1660, the counties of Maryland were gradually erected by orders in council, according to the needs of the people. To accommodate the outlying settlements new judicial districts were from time to time laid out, additional court houses and prisons erected and judicial officers appointed. Each of these administrative centres became the nucleus of a new county, the court house site becoming the county town.

In 1660, the number of counties had increased to six in number, and in 1669, to nine counties, viz., St. Mary's, Charles, Calvert, Ann Arundel, Kent, Talbot, Baltimore, Somerset, Dorchester or Dorset.[1] The boundaries of few counties had been distinctly defined. The bounds farthest away from the bay shore were very indefinitely laid out. So much confusion subsequently ensued over the county boundary lines that a number of Acts of Assembly were passed, defining in exact and unmistakeable terms the limits of each county.[2]

Towards the end of the proprietary government new counties were generally erected by statute. Many were so extensive in area that it was found necessary soon to subdivide them into two, three and sometimes more subdivisions. Baltimore county, at one time, embraced all of the province lying around the head of the bay, from the Patapsco river on the west, to Chester river on the east, and included the present counties of Carroll, Harford, Cecil, Baltimore and probably Kent.[3]

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[1] Archives, 1669, pp. 155, 156.

[2] See Bacon's Laws, 1695, ch. 13; 1698, ch. 13; 1704, ch. 92; 1706, ch. 3; 1748, ch. 14.

[3] See Johnson: History of Cecil County, pp. 81, 82; Scharf: Balto. City and County, p. 42; and Balto. *Sun*, April 6, 1878, Aug. 23, 1881, May 31, 1882. An Act of Assembly, of 1671, alludes to Chester river as bounding one side of Baltimore county. Archives, 1671, p. 318.

The names given to the counties of Maryland and their position upon the map of the State indicate very clearly the broad lines in its history. Claiborne recalled his associations with the old English shire and named his settlement *Kent* Island. *St. Mary's* was appropriately named by a band of settlers sent out by a Catholic nobleman. The succeeding half-dozen counties were named after members of the proprietary's family, beginning with the wife of Cecilius, Ann Arundel, and continuing on to Henry Harford, the last proprietary of the province. A few counties in the meantime were named after the royal family of England. After the Revolutionary War, county names were selected from great military leaders and statesmen, or from the great Indian nations who had once occupied the territory. The most recently organized county of the State was named after a well-known private citizen. It is curious to note that nearly all the counties in Maryland are peninsulas, separated from each other by the large rivers that divide both sides of the bay into parallel sections.[1]

The first use to which the county of Maryland was put was the administration of justice. The county was distinctly a judicial district. Subsequently, however, it was found adapted to other uses, and it successively became the election district, tax levy district, school district, &c., according to the will of the Assembly. McMahon calls the Maryland government a "confederacy of counties."[2] But the term is not historically nor constitutionally accurate. The county of the province, as well as the incorporated county of the State were and always have been dependent upon statutory law. In Maryland all government centered in the General Assembly

[1] The four rivers, Gunpowder, Patapsco, Patuxent and Potomac, emptying into the bay on the west side, border one or more sides of each of the fourteen counties on the Western Shore. Each of the nine Eastern Shore counties, except Worcester, which borders on the Atlantic, has at least two sides washed by some large tributaries of the Chesapeake.

[2] McMahon, p. 464.

and the Lord Proprietary. Local self-government did not exist, save where specially granted by a higher power, *e.g.*, upon manors and subsequently in certain towns. The counties were specially created for a definite purpose. They were convenient in administration, but their existence was not absolutely necessary. The province might have been divided into judicial districts and the counties not called into being.

The counties of the province at an early period became the sole election districts or boroughs, with the exception of one town;[1] the hundreds had lost this distinctive mark, and became the polling places of the counties.

The number of delegates to the Assembly allowed to each county varied. In the early Assemblies every freeman must come in person or by proxy, or be amerced.[2] Afterwards, the law was altered so that each hundred of St. Mary's and each remaining county was allowed from one to three delegates, specified in the writ to the commander or sheriff.[3] Every qualified voter was obliged to vote for some candidate, or be fined.[4] In 1660, the sheriff of each of the existing six counties was directed "to cause fower discreete Burgesses to be elected to serve in the Assembly."[5] To the Assembly of 1661, the sheriff of each county was allowed to summon as many as he deemed advisable; no one county, however, sent more than four delegates. Baltimore county sent none. But in the sheriff's writs of 1662, and for a number of years subsequent, each county was allowed to send from one to four delegates to the Assembly.[6] It was customary for each county to send the maximum number.

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[1] St. Mary's city sent two delegates, its recorder and one alderman, to the Assembly of 1674, but only by special favor of the proprietary. Archives. 1674, p. 345; 1676, p. 474.

[2] Archives, 1637/8, pp. 1–5.

[3] Archives, 1641/2, pp. 114, 115; also 1650, pp. 259, 260.

[4] Archives, 1659/60, p. 381.

[5] Archives, 1661, p. 395.

[6] Archives, 1662, p. 425.

The governor issued writs to the delegates elected, summoning them to appear at the Assembly, and unless they received this writ from the governor they were not entitled to sit among the delegates. The Lower House complained in 1671 that all the delegates elected had not been summoned by writ. The governor made answer that at their own request only two delegates were charged to Kent, Dorchester and Somerset counties.[1] The other six counties were represented by three and four delegates each.

It seems to have been the practice for the Lower House not to begin its regular business until each county was represented by one or more delegates. In February, 1675, when the Lower House roll was called, it was found that no returns were made from Cecil county. A message was at once sent to the Upper House, stating that "since it cannot be a General Assembly and the name of one county totally omitted in the journal of this house," the Lower House would ask his Excellency the Governor "whether this house shall waive the said county in their orders for settling this house." Answer was returned that it was the governor's desire that the Lower House proceed at once to business. The Lower House, however, adjourned until delegates from all counties had arrived.[2]

At the first Assembly held after the death of Cecilius, first proprietary of Maryland, an important concession was made to the Lower House by his successor, Charles, Lord Baltimore, concerning county representation. The Lower House in their petition said, "We your Lops humble servants well knowing that it is your Lops prerogative to call what number of delegates or deputies to a genll Assembly out of the Respective counties as your Lordp shall think fitt to summons by your writt" they would request that each county be allowed the same number of delegates and that all delegates

[1] Supra, 1671, pp. 240-241.
[2] Archives, 1674/5, pp. 422-3.

elected receive summons by his lordship's writ. The petition was granted on condition that each member of the Lower House take the oath of fidelity to the proprietary.[1] At this same Assembly bills were introduced that delegates' expenses be paid by public assessment and not as hitherto by county assessment; but the houses could not agree. The Upper House favored a *per diem* pay, and the Lower House wanted to include mileage. The majority of the Upper House resided near the capital city, St. Mary's.[2]

Each county continued to send four delegates to the general Assembly down to the end of the proprietary government. The law of 1716 confirmed previous laws and added a number of clauses regulating the qualifications and choice of delegates.[3]

The internal affairs of the county were administered during the provincial period by a sheriff or marshal, commissioners, magistrates or justices, clerk, inspectors, coroner, and subsequently road overseers. These officers did not include the officers of the hundred, parish or town. The government of the manor and of the corporate city were entirely separate from that of the county.

The pivotal factor of the county administration was the county court. And it must be understood that a *court* in Maryland always meant a judicial body, never legislative, and only incidentally executive. The county court was not a folk-moot, it was not even a representative body. From the very beginning of the settlement, the county court was composed of

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[1] Archives, 1676, pp. 507-8. The proprietary being in the province had acted as governor and had issued writs to but two of the four delegates elected in each county. Those summoned were doubtless considered most loyal to his lordship's interests. It is to their credit that the favor shown them did not prevent them from remembering their duty to their county constituents.

[2] The Upper House, at this time, consisted of six members, four of whom, the governor, the chancellor, the secretary and the surveyor general, were members of the Calvert family.

[3] Bacon's Laws, 1716, ch. 11.

commissioners nominated and chosen by the governor. In no county was there a legislative body, except in the corporate towns located therein; and only two chartered cities flourished during the proprietary government, and these were the successive places of Assembly meetings, viz: St. Mary's and Annapolis.

The most important officer connected with the county court was the sheriff. In early times he seems to have been called marshal.[1] He was originally appointed by the governor,[2] but his duties afterwards became so important, and his administration of such concern to the freemen, that in 1662 the county commissioners received the privilege of naming three persons from whom the governor selected one as the sheriff of the county.[3] This plan did not continue, as it led to a stronger assertion of privilege on the part of the freemen than the governor or proprietary was willing to admit. In 1669, the Upper House of Assembly, voicing the judgment of the governor, sent a message to the Lower House, in which they said, "the appointing sheriffs is part of my Lord's royal jurisdiction and that therefore the two houses ought not to intermeddle in making an Act for it." The Lower House had complained against the extortion practiced by the sheriffs, and of the want of redress.[4] When Governor

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[1] Archives, 1642, p. 163.

[2] Bozman, II., p. 573.

[3] Archives, 1662, p. 451. An Act of Assembly of 1638/9 directed that "the Chief Judge of the said Court [county] shall nominate and appoint any inhabitant of the county (not being of the councill) to be sheriff and coroner of the county;" his duties and authority should be similar to that of the "sherrif or coroner of any shire in England." See Archives, 1638/9, p. 55. But this statute never became operative, being vetoed by the proprietary.

[4] Archives, 1669, p. 197. The proceedings of the Assembly of this year are very interesting on account of the spicy messages sent from one House to the other on questions of jurisdiction. The Lower House claimed the privilege of the "Commons in the Parliament of England." The Upper House disputed this claim, and said the Lower House had no more privilege than the "Common Council of the City of London." They also

Charles Calvert became lord proprietary after the death of Cecilius in 1675, he secured the repeal of the Act of 1662, and reserved to himself and council the entire control of the sheriffs.[1] But his assertion of prerogative was of short duration. In less than a decade and a half, the Revolution of 1688, in England, spread to Maryland, and the lord proprietary found himself, in 1691, stripped of all his palatinate regalia. The appointment of the sheriffs fell to the sovereign of England, and was retained by them until the province was returned to the proprietary in 1715. But before the proprietary had assumed the reins of government the Assembly of the year 1715, summoned by authority of King George I., had passed a number of Acts depriving the sheriffs of much of their former power.[2] These officers eventually became the mere servants of the Assembly, though appointed by the proprietary.

The sheriff's duties varied from time to time, but in the main they were similar to the duties of the sheriffs of the

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declared that the Lower House had "no power to meet but by virtue of my Lord's charter, so that if they in any way infringe that they destroy themselves; for if no charter there is no Assembly, no Assembly no privileges." The threats of the Upper House were not in vain. The Lower House humbly razed a part of their journal to satisfy the members of the Upper House. The whole trouble between the two Houses was brought about by a sermon preached in the Lower House by a Charles Nicholett. The loyalty of the Upper Honse may be understood when it is recorded that the majority of its members were blood relations of the Lord Proprietary. See Archives, 1669, pp. 159-183.

In a message to the Upper House, the Lower House use the following language: "We are sorry exceeding sorry that we are driven to say that your answer & objections to the paper entituled the publick grievances are not satisfactory or that by the refulgent lustre of the eradiations of reason that shine and dart forth from them the weak and dim eye of our understandings is dazled and struck into obscurity." They conclude the remarkable address with: "We shall be willing to have our journal contradicted, expunged, obliterated, burnt, anything," provided the burdens under which "the country groans and cryes might be removed." Supra, pp. 180-181.

[1] Bacon, 1676, ch. 2.

[2] Bacon, 1715, ch. 25; ch. 41; ch. 46, etc.

English shires. Each county of Maryland had a sheriff, though at times one sheriff would be charged to perform duties in another county. He was amenable to the governor and received his instructions from him. The earliest duties performed by him were serving writs and processes, imprisoning criminals, inflicting corporal punishment and attending executions. He was also the collector of public duties, the viewer of plantations, and, until coroners were appointed, he was also obliged to view dead bodies and "warn the enquest."[1] For many years his duties remained as above outlined, except that he was relieved of acting as coroner. By act of 1676, he received fees also for taking "bayle bond," serving attachment and empanneling juries.[2] From time to time the sheriff was employed to assist the public surveyor, especially in taking a resurvey of lands whose bounds were in dispute.[3] At times he was ordered by the council to inquire into the amount and location of real property left by a deceased person, and to make return to the chancery court of records.[4]

The duties, however, entrusted to the sheriff of Kent Island remind one most forcibly of the large powers wielded by the sheriffs of the shires of old England. Not only did he serve writs, collect taxes, and imprison criminals, but he was also made commander-in-chief of the militia of the county.[5] This, however, was but a temporary expedient, owing to the

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[1] See Archives, 1642, pp. 161, 163. The sheriff was instructed to choose one of his servants to act as public executioner and hangman. Bozman, II., p. 139 and note.

[2] Archives, 1676, p. 536.

[3] Kilty, p. 144.

[4] Kilty, p. 181.

[5] Bozman, II., p. 660.

The sheriff of Kent combined the offices of the *caldorman* and of the *gerefa* of the old shires of England, the latter officer, as the king's steward and royal administrator, having charge of the fiscal affairs of the shire, while the caldorman, the national officer, was the commander of the freemen and vassals. Stubbs: Const. Hist., I., ch. 5, pars. 49 and 50.

insubordination of Robert Vaughan, the commander of Kent; it is not improbable that when this officer was reinstated to his command, the extraordinary power conferred upon the sheriff was revoked, but the fact is not stated in the proclamation for reinstating Vaughan.[1]

The lord proprietary very early recognized the importance of having a house of Assembly, to assist him in legislation, composed of the representative men of the province. To secure quiet and lawful elections in the counties and the return of well-qualified delegates, he invoked the aid of the sheriffs. These officers were made judges of the hundred and county elections, and were held to strict account for breach of duty. A case is mentioned of a county which chose two delegates to the Assembly, but after the electors had met at an ale-house, they informed the sheriff that they wanted but one delegate returned. He, willing to accommodate them, made return to the chancellor of the election of but one delegate, and peremptorily told the other delegate-elect he could stay at home. But this action did not suit the Assembly, and a fine was imposed upon the sheriff for neglect of duty.[2]

The writs for the election of delegates to the Assembly were at first directed to the secretary, to constables of hundreds and to other public men, including sheriffs, and the election ordered to take place before them, but in 1650 the sheriffs of St. Mary's and of Kent were directed to supervise the election in these counties, and the governor himself took charge of the election at Providence.[3]

The Restoration of 1715, by which Baltimore was reinstated as lord proprietary of Maryland, secured him once more the appointment of the sheriffs. But the two decades of interregnum in Maryland had given the people a knowledge of their power, and during the Assemblies of the next

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[1] Supra, p. 661.
[2] Archives, 1669, pp. 187-8.
[3] Archives, 1650, p. 260.

quarter of a century there were laws constantly made restricting the authority of the sheriff and bringing him more and more under the Assembly's control. His term of office was limited to three years and his bond placed at 200,000 lbs. of tobacco.[1] The extortion practiced by the sheriffs is severely denounced and they are alluded to as officers who "have most cunningly and craftily evaded the laws."[2] The sheriff was ordered to proclaim at the county courts recent Acts of Assembly,[3] to supervise the returns of taxables made by constables, and transmit them to the secretary's office,[4] to collect parish and county rates,[5] to read the riot act at each county court, for the benefit of the negroes;[6] to post on the doors of churches, inns, and mills, county and Assembly notices,[7] to certify the death of a condemned slave so that his owner might receive his indemnity; and in general to perform other duties incumbent upon the sheriffs of England, or specially imposed by the Assembly of Maryland, the proprietary, or by the justices of the county court.

The assemblage of magistrates known in Maryland as the County Court, had become a very different body, both in composition and authority, from its remote ancestor, the *scir-gemot*, the shire moot of England. It had never been a *fole-gemot*, an assembly of the people, and never witnessed the presence of the bishop, the lord or the assessors. The sheriff had become its servant, instead of its presiding officer, and its functions were limited to judicial questions alone.

The County Court is first mentioned in the records in the council proceedings of the year 1638, February 12, though

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[1] Bacon, 1715, ch. 46. This statute was entitled "An Act for the direction of sheriffs in their offices, and restraining their ill practices within this Province."

[2] Supra, 1715, ch. 46, par. 13.

[3] Supra, 1715, ch. 25.

[4] Supra, 1719, ch. 12.

[5] Supra, 1729, ch. 7.

[6] Bacon, 1723, ch. 15; 1748, ch. 19; 1751, ch. 14.

[7] Supra, 1716, ch. 11.

it is probable that judicial bodies known by the name had previously been convened. The county court, as first assembled, consisted of the governor and two officials appointed by him, sitting as judges, and of a grand jury regularly impanneled and sworn; but the number composing the jury is not stated. The court was convened to try several planters for piracy and murder, but since the governor was not authorized to pass judgment upon any prisoner which affected his life, the trial was deferred to the meeting of the General Assembly then in session at St. Mary's.[1] The necessity of a county court was recognized by the freemen present and before the close of the term, an act was passed entitled "An Act for punishment of certaine crimes in the County Court."[2] This statute did not propose the erection of this court, for such action was a part of the prerogative of the governor and council, but it simply declared the jurisdiction of the court after it was constituted. The governor and all the members of the house signed the bill,[3] but unfortunately no copy of it has been preserved. In the ensuing year, 1639, an act was passed by the Assembly "for the erecting of a county court." This statute did not long remain operative, as all acts of this Assembly were vetoed by the proprietary, yet the Act, which has been preserved entire in the records, is an interesting example of early legislation upon judicial matters. At this time there was but one county in the province, and judging from the great range of powers given the judges of the county court, the freemen had not yet begun to realize that the province of Maryland was something more than a mere county of the English empire. The Act directed that the court should be held on the first Monday of each month from October to March before the chief justice or commissioner, or commissioners, appointed by the proprietary or governor.

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[1] Bozman, II., pp. 60, 575.
[2] Archives, 1637/8, p. 22.
[3] Supra, p. 23.

Its jurisdiction should be as ample "as any of the King's Courts of Common Law in England." It was in fact the supreme court of the province, in civil cases, but appeals could be taken to the lord proprietary, sitting in court palatine. The defendant could have his case tried before the court, without jury, or if he "chuse to be tried by his country," before a jury of seven or more freeholders. The judges of this court empanneled the grand jury of the province, and also appointed the sheriff of the county. The county court was made a court of record.[1]

The county court act was vetoed by Baltimore, and for several years the term does not occur. In the meantime, however, a court, inferior in jurisdiction to the one contemplated by the Assembly, and differently organized, was instituted by the proprietary. Very little is known of these county courts, as they are only referred to incidentally by Acts of Assembly, but it is quite certain that their jurisdiction was very limited, and that probably they were the only courts held in the counties. An attempt was made by the Assembly of 1638/9 to establish justices of the peace in each county, but the measure proved abortive, owing to the proprietary's veto. From several acts passed by the Assembly of 1642, we ascertain that the county court was presided over by a number of commissioners, that it was held four times a year in each county, that notice of its meeting must be published at least ten days in advance, and that it was probably a court of record; it was inferior to the court known as the provincial court. Each county court had its clerk.[2] By act passed in 1648, the courts were held six months of each year, and during the first six successive days of the month.[3]

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[1] Archives, 1638/9, p. 47, 55.

[2] Archives, 1642, pp. 148, 149, 157, 162.

[3] Archives, 1647/8, p. 232.

We get glimpses of the jurisdiction of these early courts from the fragmentary records which have been preserved. The first entry in the court records of Kent Island begins: "At a court holden for this Island, at Mr.

When the Commissioners usurped the government of Maryland, they disturbed at once the administration of law and justice. It had been usual for the proprietary assemblies to enact laws for a very short period, generally three years, and likewise the proprietary had appointed officials by commission, revocable at his pleasure. The proprietary had claimed royal jurisdiction in the province,[1] but he did not press his full rights; on the other hand, the Lower House of Assembly claimed the rights of the Commons of England, but had great personal respect for the proprietary. When the commissioners of Cromwell arrived in Maryland, much of the machinery of government came to a stand-still, and the courts, the creatures of the proprietary, especially felt the baleful influence of the usurpation. The inhabitants of St. Mary's county, in 1654, petitioned the Assembly, composed of sympathizers with the Commonwealth, for "a county commission to keep court." The petition was granted and a commission was appointed, "for the conservation of the peace and keeping of courts" in the county.[2] No details are given concerning the organization of the county courts so established, but they were courts of record, and were obliged to keep entries of the ages of all indentured servants, of intestate estates, and to pass judgment in testamentary causes. The extent of their civil jurisdiction is not specified.

We get another glimpse of the county courts about a decade after the commissioners' usurpation, a few years after

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Philip Conier his house, on ye 3rd of January, 1647, Present, Capt. Robert Vaughan, commander, Mr. Thomas Bradnox, Mr. Philip Conier, Mr. Ed. Commins, Mr. Francis Brooke." Suits for slander, debt, etc., were introduced. Capt. Vaughan laid a complaint against a planter for defying his authority, for uttering reviling speeches, "full of insolency, arrogancy and pride," and for inciting the people to sedition. The defendant was sentenced to make apology in open court and the case dismissed. Hanson: Old Kent, p. 16.

In 1642, a county court for Kent Island had been erected, with three commissioners. Liber C. B., p. 92 (Md. Hist. Society).

[1] Archives, 1654, p. 354.

[2] Supra, pp. 347, 353, 355.

the proprietary had been restored to his palatine rights in the province. The Acts of Assembly of the year 1662 and 1663 make reference to court houses in each county, and to the ducking stool and pillory adjoining them. The county court is represented as a court of record and was presided over by county commissioners. Their jurisdiction was civil and criminal and extended to matters matrimonial and testamentary.[1] The court days were specified by Act of Assembly.[2] It seems probable that certain commissioners were appointed, to have a limited administration of affairs in each county, and that they were instructed from time to time by the Assembly and the governor, these commissioners constituting the county court.[3]

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[1] The commissioners of the county court were authorized to take charge of orphans' estates. They were particularly instructed to secure a "*free* education" for the orphans, but if the estate be "soe meane and inconsiderable" as not to admit this expense, then the orphans "shalbe bound apprentices to some handicraft trade or other person." Archives, 1663, p. 494.

[2] Archives, 1663, pp. 496, 497, also 479, 490, 534.

[3] The proclamation issued in May, 1658, by Gov. Fendall, erecting Charles county, a manuscript copy of which has been preserved, gives some particulars about county commissioners, but as Fendall at this time was conspiring to overthrow the proprietary government, it is possible he granted the commissioners unusual powers to secure their coöperation. He directed that the six commissioners named by him should constitute the county court and should conserve the peace and quiet rule of the county. They were instructed to inquire by oath of "good and lawfull men," number not specified, into all cases of felonies, witchcraft, sorceries, trespasses, forestallings, and in general "of all and singular other misdeeds and offences of w^{ch} justices of ye Peace in England may or ought fully to enquyre," jurisdiction not to extend to cases real or personal exceeding 3,000 pounds of tobacco, and judgment not to affect life or member. Three of the commissioners were named of the *quorum* and Mr. John Hatch appointed presiding justice or judge. New commissioners were at the same time appointed for the other counties, including St. Mary's, eight; Calvert, six; Ann Arundel, eleven; and Kent, six. The oath required of the commissioners has a suspicious appearance from the absence of allegiance to the proprietary. The oath begins, "You shall doe equall right to y^{e} poore as the Rich, to y^{e} best of yo^{r} cunning witt & power and after

The county court stands out more distinctly toward the close of the reign of Cecilius, but even then a clear view of its constitution and authority is not possible. It must be borne in mind that, during the administration of the first two proprietaries of Maryland, the Assembly played a very subordinate part in the civil government of the province, and it is only during short intervals of internal troubles that any attempts were made to restrict the prerogative of the proprietary in his judicial and executive powers; during these short periods the civil administration of the counties and hundreds being brought into more intimate connexion with the Assembly, we are enabled to get clearer views of their organization and jurisdiction. During the latter part of the period of Cecilius, the Assembly seems to have assumed a larger share in the government of the subdivisions of the province and to have enacted some laws encroaching upon Baltimore's prerogative, but the accession of Charles, second proprietary, in 1675, caused the Assembly to retrace the steps they had taken and to surrender to him almost irresponsible control of the town, hundred, and county.

An important law was enacted in 1674, directing that a court house should be erected in each county. The Assembly was led to this action after "taking into their serious consideracons the great dishonour & incomodiousnesse that attends the present governm^t of this Province for want of

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the presidents & customes of this province & Acts of Assembly thereof made." The commissioners receive no instruction concerning the roads, poor, education, religion, police, taxes and other incidents of local government. The care of these still remained with the governor. See Liber P. C. R., pp. 52-4 (Md. Hist. Society).

It may be here mentioned that in 1661, Fendall and Hatch were found guilty of treason by the Provincial Court of Maryland, and sentenced to banishment and forfeiture of estates. How much of the county government instituted by Fendall was special and how much was according to usage, cannot be stated with certainty. It is that probable the organization was lawful, but the jurisdiction of the commissioners abnormal and magnified. See Liber P. C. R., pp. 429, 430.

Court houses & prisons in each respective County therein."[1] The county commissioners were allowed two years in which to erect said court houses, under penalty of ten thousand pounds of tobacco. The law seems to have been observed, for it was said in the next Assembly, held the following year, that only a few counties had not finished their buildings.[2] Generally the site and size of the court house were determined by the local authorities, but owing to a division of opinion among the commissioners of Baltimore county, and in view of a petition of Captain Thomas Todd,[3] a delegate from that county, the Upper House of Assembly ordered the commissioners of Baltimore county to erect their court house at "the head of Gunpower River on the North Side."[4] By statute of the same Assembly it was enacted that, with a few exceptions specified in the statute, no ordinaries or inns should be allowed in the province except at the court houses;[5] the sites of the courts and the ordinaries became the nucleus of many prosperous towns in the province.

Very little information can be gleaned from existing records concerning the internal machinery of the courts. We know from the proceedings of the Assembly that court days were fixed for each county,[6] generally five times each year; that each county commissioner must attend the court and that

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[1] Archives, 1674, p. 413.

[2] Archives, 1674/5, p. 447.

[3] The lineal descendants of Captain Todd still occupy the old estate of their doughty ancestor, at North Point, Baltimore county. Through the courtesy of Mr. Thomas Todd we have had the pleasure of visiting the plantation and of inspecting the old mansion, built upon a bluff commanding a fine view of the Chesapeake bay and neighboring rivers.

[4] Archives, 1674/5, p. 430.

[5] Archives, 1674/5, pp. 432–3–4. The keeper of each ordinary must give "good security to maintaine stable room and provision for twenty horses apiece and twelve feather beds with suitable furniture before they have any license." Supra. At times a want of provisions at the ordinary led to a summary adjournment of the Assembly. See Archives, 1666, p. 34.

[6] Archives, 1669, pp. 222, 397.

the June session of the courts should take action upon business relating to "orphants," and that the commissioners of each county court "may and ought to doe heare judge & determine any businesse depending in said court."[1]

The county commissioners were authorized to appoint a few subordinate officers, as the keepers of weights and measures,[2] to assess and levy county taxes,[3] to be taken by equal assessment, by poll.[4] The clerk of the county court was made keeper of the county seal.[5] A law enacted in 1666 prohibited any county commissioner, sheriff or clerk from pleading as attorney in the county court in which he held office.[6] A comparison of the laws of Assembly during these years indicate that the terms county justices of the peace, county commissioners, and commissioners of the county courts were synonymous, and referred to the four or more commissioners appointed by the governor and council for the administration of county government as indicated above.[7]

During the forty years which elapsed from the accession of Charles, successor of Cecilius to the proprietaryship, and the restoration of the palatinate by King George I. to Benedict Leonard, the provincial records contain but little reference to the counties and county administration. The second proprietary held a firm grasp upon his prerogative and by coercing the members of the Lower House, and filling the Upper House with members of his family, allied to his interests, he was enabled to direct the government according to his own will and pleasure.

The Protestant revolution of the year 1688, having spread from England to Maryland, created serious internal troubles

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[1] Supra, p. 397.
[2] Archives, 1671, p. 281.
[3] Archives, 1671, p. 273, also 1674, p. 409.
[4] Archives, 1671, p. 341.
[5] Archives, 1671, p. 294.
[6] Archives, 1666, p. 132.
[7] Compare Archives, 1674, p. 409; 1671, p. 273.

in the province, and Baltimore, a Catholic, was deprived of his palatinate rights. The English sovereign became the chief executive and judicial officer of the province, but the Assembly was unable to secure any decided privileges. A few years previous to the overthrow of the proprietary government, the placid current of county administration had been somewhat disturbed by the erection of numerous towns within their borders, laid out and partly governed by town commissioners. Towards the close of the century a new stream of local government within the counties was opened by the establishment of parishes for religious purposes, and the appointment of vestrymen.[1]

In order to comprehend the county organization and government after the restoration of the Calverts to the palatinate in 1715 and down to the Revolution of 1776, it must be borne in mind the province had been subdivided into a number of civil and territorial subdivisions, including the county, parish, hundred, town and manor. It must also be remembered that there was no local government except that granted by the proprietary or Assembly, and that as the power of the proprietary diminished, it led to the growth of the authority and influence, not of the local boards, but of the General Assembly, and particularly of the Lower House of the Assembly, or, as they sometimes called themselves, the House of Commons of Maryland.[2] The General Assembly began to assert its control over the counties soon after the death of King William III.

During the early part of the reign of Queen Anne several Acts of Assembly were passed extending the authority of the county commissioners and tending to infuse a more democratic spirit into the counties and also tending to curtail the authority of the proprietary. The Assembly did not, however, legislate in an arbitrary manner, but their aim was to

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[1] See "Parish Institutions of Maryland." Studies, Vol. I., No. 6.

[2] Archives, 1649, p. 239.

establish some definite and permanent form of county government, instead of the irregular though not oppressive procedure of the proprietaries.

Nearly all the legislation relating to the counties refers either to the county courts or to the sheriffs as their executive officer. Whatever records of the counties during the last century have been preserved are mainly county court records. The incendiary of a court house was liable to suffer death.

Among the many acts passed by the Assembly during the half century succeeding the accession of Queen Anne, 1702, are laws authorizing the county commissioners to levy county taxes;[1] to assess parish rates;[2] to appoint road overseers and to direct their work;[3] to fix and regulate parish boundaries;[4] to appoint constables of hundreds annually;[5] to appoint press-masters;[6] and in general to administer justice upon actions of guardians and orphans, runaways, servants, slaves and masters, executors, and other matters relating to cases testamentary, civil, and criminal. The county court could take cognizance of equity cases, in actions not exceeding £20 sterling;[7] and could try slaves for capital offences.[8] A wise provision was made in 1752, by which owners of slaves failing to provide food and clothing for old and infirm slaves were made amenable to the county court.[9] By a law of Assembly of 1714, the jurisdiction of the county justices was enlarged and they were authorized to hold plea of debts exceeding £100 sterling or 30,000 lbs. of tobacco, in which the balance due did not exceed £20 sterling or 5,000 lbs. of

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[1] Bacon, 1704, p. 34; 1748, p. 20.
[2] Ibid., 1729, p. 7.
[3] Ibid., 1704, p. 21.
[4] Ibid., 1713, p. 10.
[5] Ibid., 1715, p. 15; 1723, p. 15.
[6] Ibid., 1715, ch. 43.
[7] Ibid., 1763, p. 22.
[8] Ibid., 1751, p. 14.
[9] Ibid., 1752, ch. 1.

tobacco.[1] A subsequent law authorized single magistrates of the county to take cognizance of cases under 400 lbs. tobacco.[2] Appeals from the magistrate's court could be carried to the county court, and from the county court to the provincial or superior court. The supreme court of appellate jurisdiction was that held by the governor and council.[3]

Some "rules of court" made in accordance with an Act of 1730, have been preserved in old court books, and give us a good insight into the inner life of an old Maryland court house. The first regulation of the county court of Cecil of the year 1721 reads: "When the justices meet together at the court house to hold a court one of them shall order the crier to stand at the court-house door and make three 'O yeses,' and say all manner of persons that have any business this day at His Majesty's court draw near and give your attendance for the court is now going to sit; God save the King." Rule 7 reads: "the plaintiff's attorney standing up and direct himself to the court & then to the jury if any and open his client's case, after the clark's reading the Declaration . . . . . and when done he to sitt down and then the Defendents Attorney to stand up and answer him as aforesaid & not to speak both together, in a confused manner or undecently." Rule 9 prescribed that no one presume to keep his hat on in court except "any of the Gentlemen of his Majesty's Honerable Councell." No one was allowed to smoke in the court-room without permission of the court.[4] When these rules were drawn up Matthias Van Bibber was the presiding justice or judge of the court, and his nephew, James Van Bibber, the county sheriff. Many troubles arose in the court from this close affinity of the highest officers of the county.[5]

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[1] 1714, ch. 4.
[2] 1715, ch. 12.
[3] 1713, ch. 4.
[4] Johnson: History of Cecil County, pp. 244–246.
[5] Ibid., pp. 250, 251.

A very useful officer to the county was the court clerk. His duties were important and varied. His bond was £1,000 current money. He issued warrants, kept the county records, including lists of taxables, of fines, deeds, processes, etc., made entry of orphans, of apprentices, imported convicts, and performed such other duties as were required of him by the county justices.

In addition to the officers of the county already mentioned there were two others who occupied an important place, if not a prominent one, *e. g.*, the commander and the coroner. Very little is known of the commander of counties, though the commander of Kent, before it was fully recognized as a county, was an officer who was allowed a very large range of powers. In many respects he was a deputy governor for this Island. He presided at the court, was commander-in-chief of the militia, exercised all the powers of a justice of the peace of England, and was assisted by a council of three gentlemen.[1] There were also commanders of counties appointed by the governor, but their duties cannot be clearly defined. Their names frequently occur in the old records, even after a county had been erected and fully organized. They were probably executive officers, appointed for a stated time and for a definite purpose. In 1644, Secretary Lewger was appointed by Governor Calvert commander of St. Mary's county, during the governor's absence from the county, with power to prorogue the Assembly.[2]

The office of commander of county gradually disappeared from the county government at the time the office of another official, the coroner, began to assume importance. During the early period of the colony, the sheriff performed the duties of

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[1] Bozman, II., p. 614.

[2] Archives, 1644, p. 202.

Kilty says, p. 75, the commanders of counties were "the chief officers both in military and civil affairs, not excepting judicial proceedings." But he is in error, for we have seen that the chief judicial officer of the county was the presiding justice of the county court.

the coroner, and was called "sheriff and coroner."[1] It was not until the year 1666 that efforts were made in the Assembly to appoint a coroner for each county,[2] and towards the close of the session, a bill was enacted authorizing the governor to appoint "corroners in each respective county," and to issue commissions to them in keeping with the duties of similar officers of England.[3] The statute of 1671, recognizing that the office of coroner was "a place of great trouble and charge to the officer in the execucon thereof," directed that additional salary should be given to him. This statute specifies the coroner's duties. He had to act as deputy sheriff, when the sheriff was personally interested in a court action, to hold inquest of dead bodies, &c.[4]

The county officers were put upon a higher plane than the ordinary freemen, in the respect shown them, and indecent behaviour in their presence, such as cursing or swearing, and drunkenness,[5] was severely punished.[6] Freeholders and other reputable persons, thus insulting magistrates, were liable to a fine; landless men were liable to be put in the stocks or receive thirty-nine lashes from the constable. The reviling of magistrates was severely punished, and practitioners of the law, offering any insult, affront or "indecent demeanour" to any magistrate, were liable to be set in the stocks, fined or sent to prison.

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[1] Archives, 1638/9, p. 55.

[2] Ibid, 1663, pp. 17, 23.

[3] Ibid, 1666, pp. 130–1.

[4] Ibid, 1671, p. 293; 1676, p. 536.

[5] Drunkenness was early defined to be "drinking with excess to the notable perturbation of any organ of sence or motion," but it is probable that this definition was not rigidly enforced, in view of the generous variety of liquors found at the inns erected at the county courts. See Archives, 1638/9, p. 53. Among the necessary "comodities and accomodacons" found at the ordinaries were brandy, "canary," "malago," French wines, Rhenish wines, "Portugall wynes, sherry, strong beer and ale," "fforeigne beare," "syder," "perry," quince, "mumm," and muscovado sugar. Archives, 1676, p. 296.

[6] Bacon, 1719, ch. 16.

The upheaval of English civil society, brought on by the Revolution, had a decided influence upon the course of county history in Maryland. The rapid changes tended to undermine every institution of the province, and some were so violently shaken as to be forever ruined, and were finally abandoned, *e. g.* the parish, hundred, and manor. One result of the overthrow of the proprietary government was to strengthen the Assembly and to solidify the county organization, but the jurisdiction of the Assembly extended itself into matters formerly belonging to the county officers, and to-day local laws are enacted by the general assembly which, during the provincial history, belonged to the county or to its subdivisions.

The county of to-day is a better developed and more thriving institution than during the regime of the Calverts, but it is far removed from the goal of its usefulness. An important step in the internal growth of the counties was their legal incorporation into municipal corporations. The erection and incorporation of towns, the growth of the judiciary, the abolition of the governor's council, and other constitutional changes have materially altered the form of county government and the duties of their commissioners. These local officials are no longer justices of the peace, or as formerly called, commissioners of the county court, but they are known in law simply as county commissioners. They have dropped all their former judicial functions and are but the administrative body of the county. They are elected by the people of the respective counties. They have full power, in many counties, to appoint judges of election, road supervisors, collectors of taxes, trustees of the poor, county clerk, and all other officers, required for county purposes, not otherwise chosen. All property of the county, including roads, bridges, buildings, etc., is under their charge and subject to their control. They have power to locate all election polls "in the different election districts or townships of their respec-

tive counties."[1] The levying and collection of taxes is committed to them, also the opening, altering, and closing of public roads. The commissioners of some counties, *e. g.* Calvert, Prince George, etc., are authorized to subdivide the election districts into road districts, and to appoint supervisors for them. Male inhabitants of counties, not otherwise excused, are obliged, upon summons of road supervisors, to work at least two days of each year on public highways, or pay a commutation. The supervisors are required to make quarterly reports to the commissioners. Special commissioners may be appointed by the county commissioners to lay out private roads and to assess damages. In some counties, road supervisors are elected biennially by the inhabitants, but are commissioned by the county commissioners and subject to their authority. Other minor duties are laid upon the board of county commissioners, either by constitutional or by statutory law. Appeals may be taken from them to the circuit court of the county.[2]

The superior judicial body of the county is the circuit court. The whole state is divided into eight judicial circuits, extending in area from a single city, Baltimore (8th circuit), to five adjoining counties, Caroline, Talbot, Queen Anne's, Kent and Cecil, (2nd circuit). Each circuit court is composed of three judges, elected for a term of fifteen years by the inhabitants of the counties comprised in the circuit. At least two terms of the circuit court must be held annually in each county of the circuit, and when in session it is called the county court of that county. Each county elects its own clerk. The circuit courts for the several counties are the highest common-law courts of record and original jurisdiction in the state, and each has full common-law powers and jurisdiction in all civil and criminal cases within its county, unless otherwise provided for by the constitution or by Acts of Assembly.

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[1] Md. Code, 1878, art. 22.

[2] Constitution of Maryland, 1867.

The petty judicial matters of the county are entrusted to the justices of the peace, varying in number in different counties, and appointed by the governor. They have jurisdiction where the amount involved does not exceed one hundred dollars, in all cases of enforcement of contracts, redress of wrongs, suits in bonds, actions of replevin, and cases of attachment.

In each county there is a sheriff elected biennially, a coroner, state's attorney, &c. The constables of election districts are agents of the county justices and are appointed by them.

New counties may be formed from an existing county, or from sections of adjoining counties, upon the desire of the inhabitants of the proposed new division, but no new county shall contain an area less than 400 square miles, or less than 10,000 inhabitants. Each county may send one senator to the General Assembly, and a body of delegates, varying in number from two to five, according to size and population.

According to the opinion of the highest legal authority of the state, the counties are "public territorial divisions of the state, established for public political purposes, connected with the administration of the government." They are the creatures of the legislature and are in all matters subject to the control of this body, except where restrained by the state constitution. The General Assembly, as trustee of the public, can, by mandatory acts, control and direct the legislation of county commissioners, when such interference is required for the public good.[1]

There seems to be a general feeling throughout the state, judging from the local press, that an organic change in county government is needed in order that the inhabitants of counties may secure a more economic and prompt administration of local affairs. It is urged that the prosperity of the state requires a wider diffusion of local government not only as a means of economy, but also as a means of promoting a more

[1] Maryland Reports: 12 Gill & Johnson, Brantly's Edition, pp. 279–299.

rapid interchange of ideas and of introducing to the outside world the internal resources of the state, and also as a means of fostering the social, political and industrial interests of the people. How to effect the change best suited to the habits and genius of the people is a question which must be decided by the people themselves in general conference. An attempt was made twenty years ago to subdivide the counties into small municipal corporations, known as wards or townships, similar to the townships of our most prosperous Western States, and in accordance with the views constantly reiterated by Jefferson;[1] but though the measure was incorporated in the Constitution of 1864[2] with but one dissenting voice, it was omitted in the Constitution of 1867. The Illinois county system,[3] whereby the subdivision of counties into townships is left to the option of each individual county, has been received with favor in other states. Not only the want of legislative authority, and of coercive power, but the overlapping of the jurisdiction of the county and of corporate towns has also been a source of annoyance to county commissioners.[4] The election district has been extensively used for census-taking, conventions, local option, petty judicial matters, and in some cases upon matters relating to roads, schools, taxes,

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[1] Jefferson: Works, VI., p. 544.

[2] In the constitutional convention of 1864, a committee of seven members was appointed on county divisions and subdivisions. Five of the committee, including the members from Alleghany, Carroll, Caroline, and Howard counties, brought in a report, which was incorporated in the Constitution. The delegate from Prince George's county, who disapproved of the report, based his objections not upon the inefficiency of the township system, but on the grounds that the time had not arrived for its general adoption in all the counties of Maryland. The report as adopted made it compulsory for the Assembly to subdivide all counties of the State into small municipal corporations for the management of public local concerns. The changes proposed being too radical for the times, the township article was dropped out of the Constitution of 1867. See Const. of 1864, Art. 10; also, Debates of Const. Convention of 1864, pp. 37, 65, 1080, 1192.

[3] Studies, Vol. I., No. 3.

[4] Mandamus of Town against County, Baltimore *Sun*, Jan. 29, 1885.

poor, etc.[1] A correspondent of a well-known local newspaper, recognizing the inconveniences often experienced by county officers in waiting for the biennial sessions of the General Assembly, says in substance: "It would be a good policy to give the county commissioners of the several counties the power to make petty local laws and thus relieve the legislature of much of its present unimportant work. . . . Matters of purely local interest could well come under the supervision of the county commissioners, who would be apter to arrive at more correct conclusions concerning them than the Legislature, in which it is possible for delegates from Alleghany county to decide whether a small wharf or pier shall be built in Cambridge or not. If the county commissioners had control of these affairs they would be conducted in accordance with county opinion, with no outside influences to interfere with or hinder their enactment and enforcement."[2]

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[1] Baltimore *Sun* and *American* Almanacs, 1885, give lists of election districts.

[2] Baltimore *Sun*, Feb. 18, 1884.

In a summary of the Acts of Assembly of the session of 1884 published in its columns, the Baltimore *Sun* (Mar. 29, 1884) says, that in the three hundred laws enacted at this session are included "a number of general laws, a large amount of corporation legislation, though the bulk is local and private legislation." Among Acts of the Assembly relating to counties are many authorizing the county commissioners to lay out county roads, to build bridges over small creeks, to protect game, and to encourage the killing of hawks and crows; to regulate catching of fish; to prevent the running at large of stock; to allow local option; to contract for water supply for towns; to protect agriculture and fruit-growing; to prevent carrying of concealed weapons, to punish trespassing, to establish cemeteries, to make repairs of public buildings, and many others intended to protect property and to make internal local improvements. By the enactment of a general county law by the Assembly many of these regulations could be safely entrusted to the control of the county commissioners, with more satisfactory results.

IV.

THE TOWN.

No student of society can have watched the operations of the vital processes of the social organism and failed to notice the complex growth of certain institutions and the corresponding decay in authority of officers associated with their development. The brooding, in society, of the spirit of democracy has tended to develop the institution, to multiply its organs, to strengthen its members and to foster its general growth, but at the same time there has been a corresponding contraction of the jurisdiction of its representative officer, and a diffusion of his powers among many associates. When we recall the full meaning of *patria potestas* we are led to exclaim: "The fathers, where are they," and the patriarchs, do they live forever? Quite often the serfs have become the sovereigns, and the sovereign has been reduced to a subject. Could great Augustus have seen the base uses to which the title "emperor" had been put by barbarians his heart would have died within him.[1] And who would recognize in the common hangman, or in the distrainer of house rents, the Sheriff or the Constable of the proud Norman court. Could the voice of prophecy have told Charles Martel, who ruled

[1] Not only did the "sole power of constituting & appoynting the *Emperor* of Pascattoway" reside with a subject of the English king, the proprietary of Maryland, but the "*King* of Choptico" was presented for pig-stealing at a court leet of a Maryland manor. See Archives, 1666, p. 25, and Studies, I., No. 7, p. 34.

the ruler of the Franks, that his title of major or mayor would descend to administrators of petty villages, he would have had additional reasons for moralizing upon the deceits of human greatness. And who can begin to number the generals, the counts, and the judges in modern society?

On the other hand, institutions almost as insignificant as the *bacillus* have grown with the growth of democratic ideas, and there has not only taken place a rapid increase in size, but there has followed a correspondingly complex development of structure. A familiar illustration of the growth of an institution *ab ovo* is seen in the rise and development of the town, particularly in the history of the towns of the province of Maryland.

Without enlarging upon the town *idea*, a rapid sketch of town development may enable us to understand better the history of the towns of Maryland. Mr. Spencer in *Education* says that "the genesis of knowledge in the individual must follow the same course as the genesis of knowledge in the race," or that the individual mind must follow the same order, in its mastery of knowledge, as has been followed by the race in its progress towards civilization. This doctrine of progress may not apply to all phases of political life; and history may fail to teach us that the evolution of a local institution of a State is analogous to that of the institution in general, but the growth of the town of Maryland bears a close analogy to the growth of the town in history, especially in Teutonic history, from its amœba-like structure to the complex organism of a chartered city.

The name town, in England, was originally applied to a single dwelling-house, surrounded by a strong hedge or fence, *tun*, *zaun*, from which the homestead received its name. In those early days of feuds and pillage, the strong wall or the palisade around the house-lot was as necessary a part of the freeman's dwelling as is the roof to the modern temple of religion. The thane who possessed many dwellings upon his house-lot was not hindered from applying the term town to his

entire enclosure, and if he were a man of authority and had many tenants looking to him for protection, there was no law which prevented him from fortifying his home by making a strong palisade around the entire cluster of dwellings belonging to himself and his liege men and of designating the entire settlement as a town. We know that certain settlements were more favored than others, in the possession of common lands and pastures in addition to the orchards and gardens belonging to each householder, and if this whole area became enclosed, as was sometimes done, the name of town could be applied to this large enclosure. In the laws of King Alfred we frequently read of "cyninges tune," "eorles tune," the dwelling of the king, or of the earl.[1] As civilization progressed the idea of enclosure became dissociated with the term town, *zaun*, *toun*, and though the fence was removed, or was never erected, nevertheless, by metonymy, the name town was retained and became the generic name of all small settlements.[2]

A recent atlas gives the names of 2,500 villages, hamlets and cities situate in Maryland.[3] It is not improbable that to each of these settlements the name town has been applied by residents of the place or neighborhood, even though the town at one end of the list may be simply a postoffice or railroad station, and at the other it may include a city of most complex organism, and comprising within its natural bounds considerably over a third part of the population of the State.

In order to understand how it has happened that the term town is applied as well to the city of Baltimore as to the suburban hotel, Govanstown, it will be necessary to have a clear conception of the town of provincial Maryland.

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[1] See De Laveleye: Primitive Property, p. 243. Nasse: Mittelalterliche Feldgemeinschaft. Wicklif says the swineherd who hired "the prodigal son" "sente him in to his toun that he shud feede hoggis." Luke xv. 15.

[2] See Von Maurer: Geschichte der Fronhöfe, III., p. 195, etc.

[3] Rand and McNally's "Indexed Atlas of the World," pp. 450–456.

During the proprietary regime there were but two chartered or incorporated cities in the province, and as Annapolis did not receive a charter until a number of years after the charter of St. Mary's had been revoked, and as each of these cities became successively the capital of the province, we may regard the one city simply as the successor of the other, as Baltimore on the Patapsco succeeded Baltimore on the Bush. The chartered city of the province of Maryland stands isolated from the towns, and became incorporated, not because of its commercial or economic importance, but simply because it was the centre of social and political life. No mention, therefore, will be made of its organization and jurisdiction until the unincorporated towns themselves have been studied.

The towns of Maryland are indebted for their privileges and almost for their origin to an Act of Assembly passed in 1683, exactly fifty years after the colonists had left the shores of England for their homes in the New World. During these fifty years one town had become so important as to be incorporated into a city, St. Mary's, but the extraordinary privileges secured by this town seem to have paralyzed the efforts of the legislators for further local government and no other town disputed its claims to pre-eminence. Other places are mentioned in the early records, during this half century, and some became the place of meeting of the provincial Assembly, but some of these places, presumably towns, were simply the residence of the governor, the mansion or landing place of some manor, or an insignificant Indian village.[1] London, Yarmouth, and York, Choptico, Saccaia and Nanjemy may have outlived their first settlers, but their subsequent history would indicate that the soil of each was better adapted to the growth of corn than to the growth of a town,

[1] St. John's, where the Assembly frequently sat, was a house in St. Mary's city. Archives, 1661, p. 396. St. Leonard's, Newtown, Pascatoway, Putuxent, settlements mentioned in early records, seem to have melted away like the snows of early spring.

and in a decade or two the plough passed peaceably over their roadbeds and ways.

Freeman, De Laveleye and other authorities upon primitive institutions point out the difference in origin of the "ings," the "hams," and the "touns" of England, names suggestive of future town settlements; by *ing* they understand the meadows fringing the banks of rivers or girding the arable slopes and knolls; the term *ham* was applied to the soil lying on the outskirts of arable land and devoted to pasturage.[1] Many of the hams, ings and towns becoming centers of social life, developed into great commercial cities. But it is probable that few towns of Maryland so originated. Little is known of the prehistoric towns of the province save their names scattered here and there in old records, but it is almost certain that all of these settlements, save the manors, had their counterpart in the numerous landings which skirt the bay and its tributaries. The innumerable rivers and creeks that ramify the state like the arterial system of the body, caused the canoe and the pinnace to supersede the cart or the carriage and prevented the growth of the cross-road settlements as in other colonies and forced the planters to do their merchandising at the tide-water settlements.

The embryonic towns of Maryland, first awakened to consciousness by the town act of 1683, embraced, in addition to the landings, other centers of activity, as the manorial settlements, the court-houses, a few forts and factories, some Indian villages, and probably a few inland settlements remote from the Chesapeake. But none of these towns and settlements, save the manors, had any organic life. While towns of other colonies were fast developing into little democracies, the *quasi* towns of Maryland remained simple settlements, with no civil or political rights, and entirely dependent for their

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[1] De Laveleye: Primitive Property, p. 245.
Freeman: Norman Conquest, I., p. 50.
Kemble: Saxons in England, I., pp. 59, 457, Appendix A.

existence upon the Assembly or the Council. There is not a law or ordinance of the first half century which would indicate that any town of Maryland during this period enjoyed any privilege or immunity in addition to those enjoyed by inhabitants of other parts of the county in which the town was situated.

The institutional life of the towns of Maryland begins with the Act of Assembly passed in 1683, but not operative until 1685.[1] The measure was first proposed by the proprietary in a speech delivered before the two chambers of the Assembly at its session in October, 1683, it was heartily endorsed by the members of the Upper House, and was finally acquiesced in by the Lower House, but only upon compromise. Unfortunately the records of proceedings of the Lower House, of this period, have been lost, but the records of the Upper House indicate that the sentiment of the people, as expressed by the planters in the Lower House, was opposed to the erection of towns in the province and that they only agreed to the measures of the Upper House upon the latter's acquiescence in a bill amending the laws relating to the election of delegates to the Assembly.

Towns are usually regarded as schools of democracy, and it seems peculiar that they should be strongly advocated by the proprietary of Maryland and as strongly repudiated by the body of people. The eulogies of Baltimore can be explained, but no rational explanation has been given why the freemen themselves were so indifferent to the wider diffusion of local government.[2]

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[1] It is interesting to note that at the very time the towns of Maryland were becoming self-conscious and were beginning to feel the first impulses of organic life, the royal governor of Massachusetts, Sir Edmund Andross, had angrily told the people of Salem and other towns that "there was no such thing as a *town* in the country," and the so-called town records were not "worth a rush." Force's Tracts, I., No. 9, p. 24 (anno 1689–90).

[2] In August, 1682, King Charles II. wrote a scathing letter to Lord Baltimore, accusing him of wilfully obstructing the revenue officers in Mary-

Many messages were passed and many conferences were held, in 1683, by the two houses, before the bill for towns became a law. The Upper House say, in a message, the building of towns "is so earnestly desired by the generality of the inhabitants" and was the first thing recommended to the Assembly by his Lordship.[1] The Lower House was the best judge of the will of the people and so expressed themselves, but the constant reiteration of the Upper House, that the erection of towns would lead to the "procuring of money and advancement of trade," and the emphasis given to these assertions by the proprietary and the committee of trade, led the Lower House to draft a bill to constitute two or three towns in each county, but the Act as finally passed by both Houses authorized the proprietary to erect thirty towns and to issue commissions to bodies of freemen to lay out the sites chosen, to sell the lots, and to supervise the improvements.[2] Succeeding Assemblies enacted similar laws, so that by the time of the Protestant revolution in Maryland, 1688, sixty-two towns were ordered to be built. The Assembly may have been spurred on by the Virginia town act of 1680, and the Pennsylvania town act of 1681.[3]

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land. He warns him to discontinue his practices of hindering the collections, and charges him "to take care that all our laws relating to the trade of our plantations be duly observed and executed and that all encouragement and assistance be given to the officers of our customs." Baltimore did not mention this letter to the Assembly of the ensuing year, but its contents were uppermost in his mind. The text of the letter can be found in Scharf, I., p. 289.

[1] Liber U. H. Journal, 1659/60–98, p. 490, etc., (Md. Hist. Society.)

[2] Bacon, 1683, ch. V.

[3] Hening's Statutes, 1680, vol. 2, p. 5. Hazard's Annals of Pennsylvania, 1609–1682, p. 510.

The intense desire of the proprietary for towns, and his subsequent indifference to their organic development, bears an analogy to the Tudors' solicitude for the towns of England and their wanton revoking of the rights of chartered cities. An act of Henry VIII., recites that by the neglect of lords of fees to rebuild towns "husbondry y^e^ greatly decayed, churchys destroyd, the servyce of God wythdrawen, crysten people there buryed not

The Assembly selected the site of the towns, but their size, name, and administration were left to the Governor and Council.[1] The title of the statute constituting them, "An Act for Advancement of Trade," and the contents of the first paragraph, that these towns "shall be the ports and places where all ships and vessels, trading into this province, shall unlade and put on shore, and sell, barter and traffic away" the imports, clearly set forth the proposed objects of the town. Of the twenty-four paragraphs of the statute, over one-half relate to commercial and revenue matters. All the sites lay near navigable streams.[2] Among the sites chosen were the city of St. Mary's; the Indian town; Choptico, his Lordship's Manor; the town at Proctor's; in Wye River, town land there; in King's creek, near the Old Town; William Price's plantation, in Elk River; on the church land, Port-Tobacco Creek; on Digges his purchase; at Pile's Fresh; at Lower Cedar Point, in Pickawaxen Hundred; at Britton's Neck, the town on Morgan's land.

The government of the towns was very simple. The entire local machinery consisted of five or seven commissioners, holding office during good behavior and as a close corporation appointing new members to fill vacancies in the board. The first duty of the commissioners was to select 100 acres of

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prayed for, the patrons & curats wronged, Cytees sore mynysshed," etc. 6 Henry VIII., c. 5. 7 Henry VIII., ch. I. 39 Eliz., ch. I. For an account of the spoliation of chartered cities by the Tudors, see Munic. Corp. Report (made by Parl. Com.) I., p. 17, etc.

[1] The Act of 1688 specified the names to be given to towns erected that year, 1688, ch. VI.

[2] "The canoe and the barge there took the place, in the absence of carriage roads, of the wheeled vehicles, which are now so commonly employed. At that time nearly all the settlements were along the water courses." Wenlock Christison, p. 57 (Fund Publication No. 12 of the Md. Hist. Society).

"The old towns or villages are built at the places where the rivers begin to be navigable." Rochefoucault, Travels, p. 311. See also graphic descriptions of water-travelling in Maryland as experienced by George Fox, Journal, p. 456, etc.

land, double the amount allotted to the Virginia towns by act of 1680,[1] and with the aid of the county surveyor to divide the land into 100 lots for houses and stores, with some open places left for streets and lanes, church, chapel, market house and other public buildings. The purchase money, paid directly by the purchaser to the owner of the land, was assessed by the commissioners, or, in case of dispute, by a jury impanelled by the county surveyor. Special privileges were offered county residents in the selection of lots. A house not less than 20 feet square was required to be erected by each lot-holder before a specified time, under penalty of forfeiture. An annual quit-rent of one penny was charged to each lot. The proprietary's income from this source would not swell his exchequer, for, if the entire 100 lots were taken, the quit-rent from each town would amount to a sum less than one-half pound current money.

The town act prescribed that all imports and exports should be made at these towns, under penalty of forfeiture, and also all traffic, carried on by "merchant, factor, mariner or other person," should take place in the towns.[2] The residents were compelled, under penalty, to lease the empty or unfilled warehouses to the tobacco planters who may stand in need of them. The towns were made the centers of all financial operations. All the proprietary's quit-rents, all public taxes and fees, then payable in tobacco, must be sent to the towns and there secured like other tobacco. Four naval officers were appointed for the Western Shore, and two on the Eastern Shore, to enter and clear the shipping. The closing paragraph of the statute, probably intended by the proprietary to quell the incipient growth of democratic ideas, prescribed that all delegates to

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[1] Hening's Statutes of Va., Vol. II., p. 472.

[2] This act was not intended to deprive the wandering pedlars and mechanics of their privileges. The country gentry were not restrained from "paying workmen's wages or buying at their own plantations necessary provision for their families." Supra, ch. V., par. 13.

the Assembly, elected by the freemen of towns, should be chargeable to the towns, and not to the county as hitherto.

The duties of the commissioners were confined to a very narrow circle, but in this circle they began to exercise almost oligarchic authority. They were entirely irresponsible to the inhabitants, being appointed by governor, and as a close corporation they could perpetuate their methods of administration, however faulty. Differences between lot-holders were adjusted by them, and they were ordered to keep records of their proceedings, and these probably were eventually deposited at the county courts.[1]

Within a few decades after the act of 1683 not less than one hundred towns were ordered to be erected, but the legislature soon experienced the fact that fiat-towns shared the same fate as fiat-money. The multitude of towns was prejudicial to the general welfare and many became "untowned," as a subsequent law expressed it. Only the fittest survived and these were few in number. An act of 1724 recites that "there are now but few towns or ports within this province."

From August 23, 1689, to April 9, 1692, the supreme authority in Maryland was the convention, composed of "Gentlemen associated in arms, for the defense of the protestant religion" and asserting the right and title of William and Mary to the province. The proprietary was not restored until 1715. During this interregnum several important institutional measures, such as the erection of free schools and parishes were adopted and set in operation, but only a few of the

[1] As the town act did not become operative until August 31, 1685, the present year, 1885, is the bi-centennial anniversary of their erection. The towns after their erection were seldom named in the statutes, and it is not known how many have survived the vicissitudes of the two centuries, especially as so many of them were planted not "by the wayside," but in places where they wilted and died for lack of trade. The court records of tide-water counties might reveal the inner history of many of these old towns.

town acts passed by the Assembly were confirmed by the Queen, and these were special laws.[1]

A few years subsequent to the succession of Queen Anne to the throne, a ripple passed over the current of Maryland institutional history from the interference of the English ministry in matters strictly colonial. The contest arose upon the erection of additional towns in the province. The trouble began in Maryland in 1706, when the war of the Spanish succession was at its height in Europe, the year when the bloody battle of Malplaquet was fought, and the trouble continued until 1710, the year which witnessed the fall of the Whig ministry. Marlborough had been winning splendid victories and was fast humbling the continental powers, but the public debt rose alarmingly. It was rumored that the war expenses had accumulated to fifty millions, and the queen looked towards the colonies for increased revenues. In 1705, Col. Seymour, the royal governor of Maryland, was instructed by the queen to request the Assembly of Maryland to pass acts for additional towns. He replied August 28 of the same year, "the Assembly will never consent unless compelled to building towns as her Majesty designs." The queen sought the advice of her ministry and on November 29, 1705, the Board of Trade wrote to her majesty: "Should the Assembly of Maryland . . . not comply with the additional instructions to Governor Seymour for building Towns, Quays, &c., Her Majesty may then settle Ports there by her own Authority."[2] The Maryland Assembly finally assented and passed a number of town acts. During the ensuing few years a voluminous correspondence on Maryland affairs was maintained between the Queen, her Council, the Lords of the Treasury, the Board of Trade, Gov. Seymour and the General Assembly of Maryland, and the commissioners of customs.[3]

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[1] From 1688 to 1706, the Assembly passed no laws to erect new towns.

[2] Sainsbury Calendar, B. T. Maryland, Vol. X., p. 339.

[3] In November, 1705, Mr. Popple sent a communication to Mr. Lowndes in which the "Board of Trade informs the Lords of the Treasury that

The long and vexatious proceedings were summarily concluded by an order of Council, Dec. 15, 1709, "declaring Her Majesty's disallowance" of the town Acts of Maryland.[1] By this order at least threescore paper towns were blotted from the geography of the province, and the acts of Assembly directing that certain towns be "revised, erected, or deserted," were repealed.[2] During these years, the proprietary lost his palatine regalia, being a Catholic, and could take no direct authority in the civil administration of the province. He continued, however, to collect his quit-rents and port duties.[3]

A number of the towns ordered to be erected escaped the fate which befell so many, and became thriving settlements. In the struggle for existence the manor, with its numerous buildings, seemed destined to outlive the puny towns, but the one institution had arrived at the full bloom of its existence, while the other was but bursting the bud. At the old manor, we see a well-tilled farm, with orchard, gardens and lawns, a well-constructed and roomy mansion, perched upon a commanding site, its servants' quarters hard by, shops, barn, warehouses, store, stables, tenants' dwellings, quay, and other accessories, while the little town could exhibit but a few frame houses and shops built along a straggling, hilly and muddy

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additional Instructions were sent to Governor Seymour for building of Towns, Quays, &c., in Maryland, which will facilitate the execution of the scheme proposed by him for the improvement of Trade." Sainsbury Col., B. T., Maryland, Vol. X., p. 334.

[1] The full history of these proceedings cannot be ascertained, owing to the records being inaccessible, but it is not improbable that the change of government, at this time, in England was the cause of the change in the Queen's colonial policy.

[2] Among the towns to be deserted was old St. Mary's. The county court of St. Mary's county was removed to "Shepherds Old Fields" and commissioners were "impowered to expose to Sale the Public buildings and Lands thereto belonging, in the town of St. Mary's." This same year, 1708, Annapolis, the new seat of government received a charter from the royal governor of Maryland. Bacon, 1708, ch. 3, 7.

[3] Bacon, 1692, ch. 17.

road and probably adjoining a miasmatic stream. But by the time the Calverts were restored to power, many towns had become centres of social and industrial life. Alsop might truly say, "here's no Newgate . . . nor Ludgate . . . nor any Bridewells," but the stone court house, its doors covered with notices, the prison occupied by the poor Quaker, sentenced to be "kept in chaynes and bake his own bread,"[1] the pillory, stocks, whipping-post, ducking-stool, branding irons, all indicated that here justice had her seat and balanced law and liberty. The little wooden parish church with gabled roof and swinging vane, the vestry, the rectory and parochial library on the glebe-land, indicated the dominance of a Protestant government in the province. The ale-houses and ordinaries, with their zoölogical signs of the Black Horse or Red Lion, invited the planters, the clergy, the judge, and the councillor, to their hospitable tables.[2] In the shops and stores could be seen merchants and skippers from New England, Holland, England, Barbadoes and Virginia, receiving tobacco, furs and meats in exchange for wines, liquors, sugar, salt, furniture, silks, serges, and cloths. Says Alsop, when the shop keepers "spy profit sailing towards them with the wings of a prosperous gale then they become much familiar."[3] Swine, cattle, geese, and all small animals, were forbidden to roam the streets and lanes, but the law was seldom enforced.

Around the little settlement was the fence, generally too rude to be ornamental and too insecure to be a defence.

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[1] Norris, "Early Friends in Maryland," p. 9 (note).

[2] The following observations of an eye-witness, an English traveller who journeyed along the Eastern Shore, in the middle of the last century, give us a glimpse of a provincial town: "At our arrival at Snow Hill," he relates, "I took up quarters at an ordinary and found them very good. . . . The Church and all the houses are built of wood, but some of them have brick stacks of chimneys. Some have their foundations in the ground, others are built on puncheons or logs, a foot or two from the earth which is more airy and a defense against vermin. . . . The town is very irregular, and has much the aspect of a country fair, the generality of the houses differing very little from booths." Coll. Ga. Hist. Society, IV., p. 43.

[3] Alsop, p. 50.

Annapolis town was provided with a hedge, a ditch and "an handsome pair of gates to be made at the coming in of the town."[1] The town fence of Baltimore was frequently pilfered by tramps and used for firewood. The town commissioners were aware of the names of the offenders, but they had no authority to punish them, such action being beyond their jurisdiction.[2]

Beyond the town proper was the town common, varying in size from fifteen to three hundred acres, and furnishing fuel and pasturage to townsmen.[3] The common of Annapolis was used in part as a "garden, vineyard, or summer-house," for the use of the governor, also as a place where "any baker, brewer, tanner, dyer, or any such tradesmen," whose business might "annoy or disquiet" his neighbors, might ply his vocation undisturbed.[4]

No important changes were made in the powers conferred upon the town commissioners, during the proprietary government. Here a town received one or two additional officers, as market clerk, wharfinger or inspector, but as a rule these officers were appointed by the governor or county commissioners. Charlestown, Cecil county, was specially favored. It had an overseer of streets, roads and bridges, appointed by the town commissioners, and its inhabitants received the extraordinary privilege of electing commissioners to fill vacancies in the local board, provided there were living in the town "the number of twenty fixed and settled inhabitants capable by land or estate" to vote for burgesses to the Assembly.[5]

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[1] Ridgely, Annals of Annapolis, p. 90. Bacon, 1742, ch. 24.

[2] Baltimore Town Records, Nov. 21, 1752. (In manuscript.)

[3] Bacon, 1744, ch. 22, pp. 18, 21. Many towns seemed to have possessed a common, without being aware of its historic significance. A Baltimore newspaper says: "on Saturday morning, four companies of the town militia were drawn up on the common where they were received by Colonel Washington." Maryland Gazette, May 9, 1775.

[4] Bacon: Laws of Maryland, 1696, p. 24.

[5] Bacon, 1742, ch. 23 and supplementary acts.

During the hot days of summer and the cold, blighting winter season, when the roads were impassable, the towns of Maryland remained as lethargic as the Dutch villages described by Irving, but in the autumn they were the scenes of activity and enjoyment. It was at this time that the annual fair was opened, and important court sessions held. The arrival of foreign vessels,[1] the flocking in of tax-payers and debtors, the gathering of planters and of lords of manors to purchase winter supplies,[2] the parade of the trained bands, the races, the entertainments at the ordinaries, the auctions of slaves and servants, all combined to infuse much life, motion, and real interest into town life. The advent of new ideas and of new institutions in Maryland has banished almost entirely the picturesque local scenes once seen in the autumn, but in the Piedmont regions of Virginia, "court-days" still perpetuate certain customs formerly common to both colonies.

The unincorporate towns of the province, thus far considered, have been market towns or villages. We have seen that they were erected as marts and entrepots and were endowed with no special political or civil privileges. We found that these towns possessed no organic life, no by-laws, no tungemot, no town house, no selectmen, no local elections, no mayor, no aldermen, no councilmen, but were a collection of stores, warehouses, quays, and government buildings. The majority of these towns, like the pueblos of California, contained neither mission or presidio, church or fortification, and

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[1] Bampfylde-Moore-Carew, King of the Beggars, gives in his "Apology," graphic accounts of old Maryland customs. He recites how the captain of a foreign vessel when nearing port fired guns to announce his arrival, and how the deck of the vessel when anchored was converted into a market flocked by planters, and how the "bowl of punch went round merrily" amid the oaths, jargon and cries of the traffickers. See p. 100, *et al.*

[2] A number of towns in Maryland were designated by name as places for holding markets, generally held weekly; in some towns semi-annual fairs were held. The market towns of England became famous as centers of inland traffic. See Stubbs, I., p. 94.

grew not around the chapel[1] or school, but around the custom-house or court-house.[2]

There was one exception, however, to the monotonous uniformity of towns, and this was the metropolis, the capital, whether we regard it as located on the St. Mary's or on the Severn, St. Mary's City or Annapolis.

Yoamaco, the chief city of one of the forty tribes which composed the great Powhatan confederacy, was well suited to become the chief city of the settlers. Beautiful for situation, commanding a wide prospect of rolling ground covered with great forests of primeval verdure, and well sheltered from the storms which at times sweep along the Chesapeake, it seemed destined long to outlive the colonists who had founded and beautified it, but its fate was settled when the Puritans became dominant and its altars were removed to a distant site. For a half century St. Mary's exhibited signs of vigorous life, but it could not withstand the shocks of civil disturbance and its desolation has become complete; living now only in legend and romance it well deserves the name of the Lost City of Maryland.[3] Its buildings, its records, its charter, its very approaches and ways have long since perished and its name alone remains.

One document has been preserved which indicates that the municipal history of Annapolis was but the repetition of that of St. Mary's, and that the form of government, the jurisdic-

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[1] Tomlins, in his Law Dictionary says "there ought to be in every town a constable or tithing-man, and it cannot be a town unless it has a church."

[2] Many quaint names have been applied to sites now occupied by thriving towns. The city of Washington, D. C., is built upon a tract of land for many years famous among the Indians for its great council fires. When granted to the whites, it was known successively as "Widow's Mite," Roon, Carrollsburg and Hamburg. Tradition says a Mr. Pope purchased a large tract of land within the present bounds of Washington, and named it Rome; the demesne was called Capitoline Hill, and an adjoining creek, the Tiber. De Vere: Rom. Am. Hist., pp. 142–3.

[3] Kennedy: "Rob of the Bowl" gives a spirited legendary narration of St. Mary's. See also De Vere: Romance of Am. Hist., p. 209.

tion of the officers and the privileges of the freemen were alike in both cities. This document is a petition from the inhabitants of St. Mary's to the General Assembly, protesting against the removal of the seat of government to Annapolis.[1] But by Act of the Assembly of 1694, held at St. Mary's, the port of Annapolis was made the future seat of government.[2]

The original charter of Annapolis is lost, but a copy has been preserved in a small duodecimo book, bearing no date, preserved in the Md. Hist. Society. This charter was granted by Governor Seymour in 1708, but previous to the granting of this royal charter, the town had been incorporated in 1696 by Act of Assembly, held under William III. By the terms of its first incorporation the government of the town was entrusted to eight freeholders, called "Commissioners and Trustees." Their duties were administrative, judicial and executive. The first board of officers was appointed by the Assembly, and included the governor, members of his council and town inhabitants. The office was held for life and vacancies were filled by a general election of the freemen. The freemen of the town included the governor, the council, the burgesses of the Assembly, resident freeholders, and all persons having "a trade in the town pasture." The privilege of suffrage was also granted to certain mariners and traders.[3]

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[1] See document in Scharf, I., p. 345.

One of the most curious constitutional questions arising during the last years of Cecilius' government was the extent of the jurisdiction of St. Mary's city. A certain burgess, Morecraft, insisted that the proprietor's house in Wild Street, Westminster, England, must be regarded as legally within the bounds of St. Mary's city, Maryland, and that an offense there committed against his lordship was triable before the court of St. Mary's. See Archives, 1669, pp. 166, 167, 170, 172.

[2] Bacon, 1694, ch. 29.

[3] The freemen were entitled to the right of suffrage, to judicial procedure in local courts, to hold lots in town pasture, &c. The freedom of Annapolis was extended to those only who were interested in its commercial prosperity. The freedom of English towns was obtainable either by purchase, free gift, birth, marriage, apprenticeship or guild membership. See Mun. Corp. Reports, I., pp. 18, 19.

The town commissioners were authorized to hold courts for trial of causes civil and criminal, and to award judgment and pass sentence, but not to extend to life or member or to exceed the sum of five pounds sterling or one thousand pounds of tobacco.[1] They were further instructed to make by-laws and rules for the good government of the town, to regulate the appointment of lots in the town common or "town pasture,"[2] to hold a weekly market and an annual fair.

The act of incorporation of 1696 was superseded by the royal charter of 1708. The war of the Spanish Succession was raging at this time in Europe, the war expenses of England were accumulating rapidly, the debt was assuming great proportions, commerce was falling off and trade was almost

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[1] Bacon, 1696, ch. 24.

[2] Many of the towns of Maryland had a town common, or the enclosure held in common, but the peculiar uses to which some were put indicate that the name had descended to persons unconscious of its origin or intent. The term "townland" frequently occurring in the old records evidently meant, when first employed, a kind of town common, and its use would indicate that in Maryland it antedated the town. The town act of 1684 located a number of the new towns upon existing town lands. Nearly all of the twelve ports erected in 1669 were ordered to be built "afore the townland," as "in Baltimore county, afore the Town land in Bush river." Proclamation, April 20, 1669. An act of 1671 alludes to "the towne land commonly called St. Maries ffield and conteyning one hundred acres." Archives, 1671, p. 297. All immigrants previous to 1638 were allowed a portion of "St. Mary's field." Kilty, p. 33. It is not improbable that the town-lands of the counties of Maryland were similar in use and area to the town-lands or plough-lands of Ireland, the smallest subdivision of the county and containing generally about 120 acres. In Ireland they had been employed for fiscal districts, but this use was abandoned there. Liber Hiberniae, 2, VII, pp. 335, 367, 374. Doubtless the town-lands of Maryland were originally but the town commons, so to speak, of the counties, or certain sites along the sea-board and river banks, devoted to the general uses of the county inhabitants for trade and other purposes, but having their title vested in the proprietor. Town-lands of the counties at times became the town commons of the towns, and in later years the old term town-land was revived to indicate town lots in general. When Annapolis became incorporated a distinction was made between the town-land and town-common. Bacon, 1694, ch. 8.

paralyzed. It is not improbable that the English ministry hoped colonial trade would increase the revenues, hence the privileges allowed cities in America. The preamble of the Annapolis charter described the town as "a very pleasant, healthful and commodious place for trade."[1]

The charter vested the government in the hands of a Mayor, Recorder, Aldermen, and Councilmen. The Mayor held office for one year, and was elected from among the aldermen by the municipal board, consisting of mayor, recorder, and aldermen. The same body elected the ten councilmen from among the body of freemen. The vacancies in the board of aldermen were filled by the remaining aldermen from among the common councilmen. Briefly, the mayor was selected from the aldermen, the aldermen from the councilmen, and the councilmen from the body of freemen. The city government was virtually a landed oligarchy, the board of aldermen being the controlling power. Seeds were sown, which tended to develop into the entire independence of the governing body

[1] A very stoutly contested constitutional question arose upon the bestowal of the royal charter to Annapolis. In 1704, the royal governor, John Seymour, probably influenced by the commercial distress of England, had suggested the advisability of re-incorporating the chief town of the province and bestowing upon it special privileges as a center of trade. But the Assembly refused to confirm his proposition and no action was taken. But in 1708, Governor Seymour conferred the new charter by his own authority and in the name of Queen Anne. The Lower House of the Assembly immediately repudiated his action and refused to grant seats to the delegates from Annapolis. The governor despatched a conciliatory message to the Assembly, in which he urged that he had not overstepped his prerogative and begged them to confirm his ordinance. The House refused to retract and was dissolved by the governor. The new Assembly proved as unmanageable as the former and insisted that the chartering of cities in Maryland belonged to the palatinate regalia of the deposed proprietary, and that no royal governor could exercise this prerogative without special instructions from the Queen. A conference, however, was held by the Assembly and the governor, and the House finally agreed to assent to the new charter, after making some changes in the instrument of incorporation. See Bacon, 1708, ch. 7.; Upper House Proceedings, 1699–1714, pp. 946–956; McMahon, I., p. 257.

from the main body of freemen, and to bring forth a form of rotten municipality so abundant, in past years, in England and Ireland. But other counteracting influences were at work, and Annapolis seems to have escaped the financial and political evils which befell many towns of Great Britain.[1] The democratic principle enunciated by King Edward I., *quod omnes tangit ab omnibus approbetur*, was gradually leavening the freemen of the city, and the colonists in general.

The jurisdiction of the town corporation was very extensive, including matters fiscal, legislative, executive, and judicial.[2] The mayor, recorder, and aldermen were appointed justices of the peace, and could administer justice individually or sitting as a court. The principal courts held were the "court of pypowdry" for summary trials of offences occurring at the annual fair, and the "court of hustings," for trial of civil offences. The jurisdiction of the latter court was not unlike the old Saxon "hustings" (from *hus* = house, and *thing* = assembly.) Mention is made of "Mayor's court" and "Recorder's court."

The municipality was authorized "to execute all the laws, ordinances, and statutes," enacted for the government of the city, and was impowered to levy and assess taxes under certain restrictions. The mayor, recorder, and aldermen, were also made judges of election.

The legislative powers of the corporation are witnessed, in part, from the so-called by-laws. Among them we find laws regulating the fees of officers, and specifying their duties; also laws relating to streets, apprentices, servants, and slaves, public buildings, wagons and other vehicles, inns and coffee-

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[1] Mun. Corp. Report, I., p. 17. Lynch, Cities and towns of Ireland, pp. 55–60.

[2] In 1676, the corporation of St. Mary's received all the property of Mr. Robert Cager, in trust for the use of St. George's and Poplar Hill Hundreds, to support a Protestant ministry in these hundreds. The hundreds, not being incorporated, could not legally hold the property. Archives, 1676, pp. 530–531.

houses, markets, fires, the dock and harbor, etc. The appointment of petty local officers was entrusted to the municipality. The city was represented in the General Assembly by two delegates, elected by the freemen, and by law entitled to but one-half the pay of county delegates. The right of suffrage was given to all who had a visible estate of twenty pounds, and to all residents of the town who had served an apprenticeship to some trade for a period not less than five years; but this apprenticeship must have commenced at Annapolis. Every voter must swear to bear allegiance to the city and to uphold its dignity.

The city of Annapolis, notwithstanding its faulty constitution, grew in wealth, learning and social distinction.[1] Towards the close of the century, it had even aspired to the rank of the Athens of the colonies, notwithstanding the contemporaneous assertion of the learned Adam Smith that "those towns which are principally supported by a constant or occasional residence of a court . . . are, in general, idle, dissolute, and poor."[2] By the Bill of Rights, adopted Sunday, November 3, 1776, the city of Annapolis was secured in all its "rights, privileges, and benefits, agreeable to its charter and the Acts of Assembly."[3]

It is unfortunate for the study of the local institutions of Maryland, that its only incorporate cities were the provincial seats of government. The capital city bore to the colonial government, a position analogous to that sustained by the city of Washington to the national government, the local autonomy being subordinated to the general welfare. In the early history of the province, when the powers of government were not so clearly differentiated as at present, the General Assembly was the pivotal point of administration; its paternal influence was very marked; it was the main spring that gave momentum and direction to all local institutions.

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[1] Eddis, Letters from America.

[2] Wealth of Nations, I., p. 338 (Roger's).

[3] Md. Bill of Rights, 1776, par. 37.

The free play of its legislative enactments was, at times, checked, not by the protests of freemen in local assembly, but by proclamations of the King or by ordinances of the council. The inevitable conflict between prerogative and privilege, between proprietor and people, was maintained almost entirely within the halls of the General Assembly, and at no time did any city or town rise into prominence as a champion of democracy or an ally of aristocracy. During the periods of greatest moment, when foreign foes were harrying the Chesapeake, and the savage aborigines were bringing death and ruin to many families; at times, when the government was seized by rebels and the palatinate regalia usurped by a stranger; during periods of religious intolerance, financial depressions, internecine wars, when the cheek of man paled from dread, and the heart of woman melted with fear, the cities and towns of the province were as indifferent to their environment as the stocks and stones of their highways. It was not until the eve of the overthrow of the proprietary government, that a few towns awoke to self-consciousness and lent their aid to the cause of revolution, but the General Assembly still maintained its legislative and executive supremacy, and in the time of struggle and warfare, it delegated its powers for local administration, not to the city or town, but to the county, the hundred, and parish. Many years elapsed before the leaven of democracy thoroughly permeated the local institutions, and caused the people to recognize that a town was something more than a settlement enclosed with a hedge or fence, but was capable of becoming an *imperium in imperio*, a little commonwealth within a large republic, a self-governing institution endowed with all the attributes of a living organism. Palgrave says that "throughout the west of England there was scarcely a town in which the statue of Athelstane was not erected," owing to the respect held for the young prince for his unwearied protection of towns.[1] But in Maryland no Athelstane had

[1] Palgrave, p. 182.

arisen during the proprietary regime to foster the towns, and although scores were built, but very few were able to endure the ravages of time and to profit by the reviving influences of the civilization of the present century.

The modern towns of Maryland illustrate all phases of local political development, from the inland village with its single patrol or constable, to the great commercial metropolis with its complex structure, but it is possible to classify them into three ranks: (1) those towns directly and entirely under the county jurisdiction; (2) the towns partly self-governing and partly under the county commissioners, and (3) the towns completely separated from county authority. These towns may be respectively designated the village, the town corporate and the city, but this designation is not sharply made in popular language.[1]

The villages of Maryland have multiplied rapidly during the present century. Changes in land tenures, inland improvements, the location of mills and factories, commercial enterprises and many other causes have led to the erection of villages. Some of these villages, like Brookeville, are the settlements of large families, residing in one place, like the Saxons of Ancient Britain,[2] while others have been aggregated together through the individual or combined influences of the court-house, inn, mill, church, factory, school-house, store, post-office, railroad station, landing, hotel, etc.

The political life of the villages is *nil.* They are simply settlements within the county and entirely subject to the

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[1] Dillon's distinction between "city" and "town" is entirely foreign to Maryland. By *town* he means a pure democracy and by *city* a representative democracy. See Dillon: Mun. Corp., pp. 37–39.

The legislators of Maryland have been very careless in the use of town titles. One statute makes mention of the "town of Chesapeake City," another of the "town of Ocean City," while a third mentions the "village of Leonard Town." Manchester was known in the general laws as borough, town and village, and numerous places are called town and village in the same statute.

[2] Green: History of the Eng. People, I., sec. I.

county commissioners upon all questions of local government. Some of these villages or unincorporate towns may contain hundreds of households, as Towson, Baltimore county, and yet in local matters be entirely governed by a board of county commissioners sitting several dozen miles away. It is reported that not infrequently the incorporation of towns is resisted by county commissioners for fear of losing political influence. One town is known to have forfeited its corporate rights and to have become merged into the county jurisdiction because of the political heresy of its residents. The principle in physics known as the conservation of energy has an analogy in the local life of the Maryland town. The gain of the town is the loss of the county, and no board of county commissioners cares to see its administrative powers frittered away among the towns and villages of its territory. Here in a miniature way can be seen the working of the two forces, localization and centralization. Sometimes a small town has found itself "seriously oppressed" by incorporation, and has sought to relieve itself of the "great inconvenience" by praying for a repeal of the act of incorporation.

The first groping of embryo towns after political life is interesting to notice. Here and there can be seen a village conscious of its increased vigor, seeking a higher existence and claiming special recognition from the county commissioners. New Windsor obtains one constable, Cambridge is only satisfied with two constables. These constables must not simply serve writs and execute warrants, but they must also seize stray swine, act as inspectors, visit suspected places, arrest suspicious characters and disperse tumultuous gatherings. Other towns are allowed by the county commissioners a board of town commissioners to look after certain minor town matters. The progressive growth of a settlement from a village to a town corporate is seen in the history of Rockville, Montgomery county. In 1801, a board of five commissioners was appointed by the General Assembly to resurvey the town lots, lay out streets and lanes, and make a plat of

the town for deposit in the county court. A town constable was appointed by the levy court of the county. In 1802 the board of town commissioners was reduced to three persons, and they were instructed to appoint two collectors of taxes. The Assembly, in 1805, appointed a new and distinct commission to lay off an addition to the town, and in 1826 the levy court was authorized by the Assembly "to appoint three persons residents of said town, to be denominated trustees of Rockville, whose duty it shall be to superintend the repairing and improvements of the streets and lanes." In 1860 the town became incorporated.

Two other types of the village remain to be considered, those whose commissioners were appointed by the General Assembly and those which elected their town commissioners, though in neither case was the village or town a municipal corporation.[1] The commissioners of Oxford had perpetual succession, while in Denton vacancies were filled by a general election of town residents. In Chestertown, the commissioners appointed by the Assembly held office for one year, their successors being elected by the town. The inhabitants of Liberty annually elected two tax officers, known as superintendents. The town of Charlottesville was laid out and administered by a board of commissioners appointed by the trustees of Charlotte Hall School. This town was a type of

[1] The commissioners of the town of Princess Anne, appointed by the General Assembly, were authorized to appoint the town constable, but the town patroller was elected by the inhabitants, at a general town election, and was amenable for neglect of duty to the town overseer. Laws of Md., 1802, ch. 39.

In 1804, the town commissioners of St. Michael's, appointed by the General Assembly, were authorized to make and execute all laws and ordinances, necessary to preserve order and decorum in the town, "not contrary to the laws of this State or of the United States." And yet in 1817 the streets of St. Michael's were declared by the commissioners to be in wretched condition because "the said commissioners have no power by law to compel the inhabitants to work on and repair them." Many towns have since suffered from want of coercive power on the part of those authorized to maintain their welfare.

the old English towns erected upon the demesne of the lord, or of some monastery. It was erected for speculative purposes, to swell the revenues of the school, but though the purpose was a worthy one it proved a failure, and the trustees of the schools became learners in the school of adversity and were forced to recognize that a town grows not as a mushroom, to full maturity in a night, but silently and gradually as the oak from the acorn.

The quarter of a century succeeding the war of 1812 was the renaissance period in the local institutions of Maryland. During this period the spirit of democracy diffused itself through the State and brought about the adoption of many improvements in the political and social life of the people. Schools, suffrage, finances, land tenure, courts, internal improvements, the council and the Assembly all experienced changes more or less marked. County succeeded county in the incorporation of its commissioners and town after town laid claim to corporate rights.

To the question what was meant by incorporation of a town, different answers can be given according to the extent of privileges granted different towns. There has been in Maryland no general law for incorporating towns. The corporate name conferred, the number of officers, and their powers and jurisdiction, are specially mentioned in each act of incorporation. Among the terms applied to the corporate body are "moderator and commissioners," "president and commissioners," "chief bailiff and commissioners," and "burgess and commissioners." The chief officer was simply the presiding officer of the board, and in general he possessed no distinct judicial or executive powers, but sometimes he was impowered to act as justice of the peace. Hillsborough and Cumberland may be taken as two extreme types of corporate towns. In 1822, the commissioners of Hillsborough were authorized to make by-laws for the good government of the newly incorporated town. The inhabitants of this town, in 1827, interpreted this act of incorporation by declaring that "one of the

principal objects of [it] was to prohibit swine from going at large" in the town. In most towns, however, incorporation meant something more than the power to impound stray animals. When Cumberland was incorporated in 1815, the commissioners received almost as many privileges as did the mayor and city council, in 1833, when the town became a chartered city. The commissioners were instructed to open and repair streets, to restrain disorders, to impose fines, to levy taxes, and to appoint subordinate town officers. But the distinction between a corporate and an unincorporate town was not always drawn, since some towns were administered at times by several boards of commissioners, created for different purposes, some being incorporated while others were not. Baltimore town was for many years governed by an unincorporate commission whose members were known as town commissioners; but some years before it became a chartered city, the Assembly authorized a special commission elected by the inhabitants to superintend the streets and lanes of the town. This commission was incorporated, and its members gradually assumed very large powers, and finally it virtually controlled the town administration, although its members continued to be known as special commissioners.[1] In some instances, at least, four distinct boards of commissioners have been constituted by different bodies to govern in one town, and appointed, respectively, by the General Assembly, the county court, the county commissioners, and a fourth board elected by the town residents. Frequently these local boards had the same regard for one another as did the ancient Samaritan and Jew. The confusion of local administration owing to these various governing boards is seen to some extent in the town of Baltimore, just previous to the beginning of the present century.[2]

The chartered cities of Maryland are six in number, Baltimore, Annapolis, Cumberland, Hagerstown, Frederick, and

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[1] Compare Acts of Assembly, 1729, ch. 12, and 1782, ch. 39.

[2] Brown: Boundaries of Baltimore, pp. 23, 26, 36, 59–67, 73. Baltimore *Sun*, November 21, 1882.

Westminster, but only one, Baltimore, is completely divorced from the county, in possessing its own sheriff, courts, etc.[1]

The distinction between city and town is as poorly defined as that between the corporate town and the village. No city of the State is secure in its local affairs from legislative interference except the city of Baltimore, which has its form of government and the functions of its officers guarded by the State constitution.[2] In general the cities have a more complex structure and have their privileges specified with more detail; but some town commissioners have larger jurisdiction than the mayors and councils of some chartered cities. In theory, the commissioners of towns corporate are but a local standing committee of the Assembly, but by force of custom these commissioners have not been restricted to the Assembly burgesses and the power of their appointment has gradually devolved upon the town inhabitants. The chartered cities are, however, municipal corporations of a higher type, but like the towns corporate they are but creatures of the General Assembly, since their charter is at any time revocable by the Assembly, unless protected by the State constitution. In the towns corporate it was the town corporation which was specially benefitted, and this corporation might or might not represent the will of the people; but in the charters granted to cities the interest of the people and the welfare of the community become the paramount aim and the people themselves become final arbiters of the fate and prosperity of the municipality.

A difference is noted between the corporate names of towns and cities. The legislative authority of the city is vested not in a board of commissioners, but in a council, and the head official of the city is not a president or chief bailiff, but a mayor.[3] With but one exception the mayor of each city is

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[1] See Const. of 1851, art. IV., sec. 8, etc.

[2] Constitution of 1867, art. XI.

[3] Each chartered city of Maryland has a different corporate name, but this is probably a coincidence. The statutes mention "the Mayor and Coun-

authorized to exercise the powers of a justice of the peace, and, with exception of Baltimore and Frederick, he presides over the deliberations of the city council. The subordinate officers of the cities are either nominated by the mayor and confirmed by the council or elected by the council. A few city officers are elected by the citizens at a general election.

When we examine the internal machinery and the jurisdiction of the municipalities we find almost as much diversity as in their corporate names. The appointment of officers, the levying of taxes, the enactment of laws, the administration of justice, the maintenance of peace, the care of public health, vary in method more or less for each city. The metropolis of the State has its police board appointed by the General Assembly and its school board appointed by its city council. The commissioners of these boards, though expending nearly one-half of the city's annual revenues, are not responsible to the city inhabitants, nor to the chief executive, the mayor.[1] Other cities are likewise checked in the free play of local administration, either by the General Assembly, the county commissioners, or the county court. In no city of the State is there a harmonious working of the local machinery; external interference is constantly at work, and at times to the detriment of the city's progress, and to Maryland the words of a well-known mayor of a great metropolis are applicable. He says, "The majority of our municipal charters as they stand to-day entirely fail to represent the experienced judgment of the most capable men in the community as to what

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cilmen" of Cumberland; "Mayor, Recorder and Aldermen" of Annapolis; "Mayor and City Council" of Baltimore; "Mayor and Common Council" of Westminster; "Mayor, Aldermen and Common Council" of Frederick, and the "Mayor and Council" of Hagerstown. The presiding officer of some village commissioners is also called "mayor."

[1] The recent charter of Hagerstown, ratified by the people there in March, 1884, gives purely legislative power to the mayor and council, but lodges all control of the streets, including repairs, lighting, etc., also the police, etc., in the hands of a commission known as "street commissioners."

is the best and most practical organization of the administrative agencies of local government."[1]

One important feature of towns has been but incidentally mentioned, namely, the town area, or the territorial jurisdiction of the town officers. The standard area of the old towns was 100 acres, but the size of modern towns has been defined either in the charters or in supplementary statutes. Some of the larger cities and towns have frequently complained that owing to the impossibility of enlarging their bounds their municipal life has been stunted and their progress has been stayed.[2] It is urged by cities desiring more territory that owing to the neglect of suburban residents to co-operate with the city authorities many evils have been caused; the public health endangered, and law and order violated; trade and travel hindered by the bad management of suburban streets and roads, municipal taxes increased, and many burdens borne by the cities which should be shared in part by that portion at least of the county immediately girding the city proper. There can be no objection to the principle that the progress of a city may be stayed for want of adequate territory, but the best means of acquiring this territory is a question in politics not easy to solve. The injurious results of insufficient town area have been experienced by many towns of England. A recent commission says, "In many cases great inconvenience results from the want of extension of the corporate authority over the suburbs; and these evils are likely to recur continually, unless ready means could be afforded of enlarging the boundaries from time to time."[3] This evil was sometimes obviated in some Maryland towns

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[1] Mayor Grace: Harper's Magazine, September, 1883.

[2] A writer of the last century, after describing the three towns of St. Mary's, Annapolis and Williamstadt (Oxford), says: "The other settlements of this province scarce deserve the names of villages, and there are hamlets in Pennsylvania much more considerable than the three cities of Maryland put together." Gent. Mag., vol. 25, p. 499 (Nov., 1755).

[3] Eng. Mun. Corp. Reports, I., p. 44.

by the Assembly impowering town commissioners to extend their jurisdiction over the suburbs of the town, *e. g.*, in Georgetown, now included in the District of Columbia. The portions of the county lying one-fourth of a mile beyond the limits of the town, and to the middle of the Potomac river were considered precincts of the town, and within the jurisdiction of the municipality, in certain matters.[1]

The old and the new towns of Maryland are well typified in the neighboring towns of Joppa and of Baltimore. The former town, probably settled over two centuries ago, was located upon the broad Gunpowder river, near its entrance into the Chesapeake, and well deserved a name, whose meaning is *beauty*. The name of Paradise bestowed upon a neighboring settlement gives us a hint as to the environment of this forest region. For many years Joppa reigned the mistress of the Chesapeake bay. Within its borders were the county court-house, the chapel, the county prison,[2] several inns and a number of commodious warehouses and stately mansions. In its harbor were vessels from New England, the West Indies, and ports of Europe. It became the seat of the social and civil life of the county and of the adjoining hundreds and parishes, and being located upon the public highway leading to the Northern colonies, it became a well-known resort for travellers and merchants. But owing to the indifference of its citizens, the faulty form of local government, the jealousies of its neighbors, the enterprise of the inhabitants of neighboring towns, the glories of Joppa faded away and its candlestick was removed to the little settlement located on the Patapsco river, sixteen miles to the southwest. When Whitefield visited Joppa, in 1739, he saw the town in its decline. He calls it a "little town."[3] Within

[1] Laws of Md., 1789, ch. 23.

[2] One section of the prison yard was known as the "Amen Corner," probably a corruption of *amend*, or *amende*. See Scharf, II.

[3] Whitefield's Journal, Phila., 1740. He also wrote that in Maryland there was "scarce any town worth mentioning."

a half century after the visit of the great evangelist, Joppa had passed into the list of "deserted" towns and has since become so desolate as to make its site almost an enigma. Baltimore county has many "Joppa roads" traversing it, but it is only lately that the convergent point of these roads has been ascertained. The destruction of the town has been complete. Its warehouses have rotted away, its wharves have disappeared, its harbor has become filled with alluvial deposits, its streets have been turned into ploughed fields. Upon its very site have camped the Indians and in the ruins of the silent town they may have kindled their camp-fires from the rotten timber of its fallen houses.[1] A few neglected grave stones, several heaps of brick and rubbish, and a solitary mansion, belonging to one of the oldest families in the State, are about all that remain of the once famous sea-port town of provincial Maryland. One inscription, of remarkable simplicity, upon a substantial, well-preserved monument, tells in brief the commercial story of the now deserted town: "David McCulloh, Merchant in Joppa." Joppa, old in name and associations, gave place to the modern town of Baltimore on the Patapsco. The name of "Joppa" has lately been resuscitated and happily given to a new steamboat which now plies the Chesapeake Bay, as does the "Johns Hopkins," both names symbolizing a commercial as well as an historical idea.

Baltimore, or New-town as Whitefield names it, was erected, it is true, nearly fifty years before the close of the proprietary

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[1] In the Historical Seminary of the University there are preserved several relics of old Joppa, including a stone Indian hatchet found near the water's edge, near the ruined remains of an old building, probably a tobacco warehouse. The site of the chapel and court house was discovered in a ploughed field hard by. See Baltimore *American*, November 25, 1882. It is interesting to note that these remains of one of the "lost towns" of Maryland constituted the nucleus of the now flourishing Seminary Museum, which includes the Cohen collection of Egyptian relics, and many coins, weapons, specimens of pottery, etc., from various parts of the world.

government, but it was not till after the first president of the confederated colonies had taken his office at the seat of national government that the town was erected into a municipal corporation. The rapid growth of Baltimore since its incorporation, exceeding perhaps that of any other city of the original colonies in proportion to its age, indicates that even in Maryland there are great possibilities for town organizations. The conjectural etymology of its name, *Balty*, *balti*, or *bally* = town or village, and *more* = great or large, "so that Baltimore signifies the great or large town, village or townland,"[1] is a happy omen of even more prosperous days. The more modern derivation of *balt* = belt, and *more* = great, is more in accordance with the views of its inhabitants that the Belt which surrounds the city as a strong cordon, restricting its bounds to an area probably less, proportionately to its inhabitants, than that of any other American city, is one great obstacle to a symmetrical growth of the great metropolis. Baltimore has by no means an ideal form of government, nor would its financial or administrative history indicate that there have been no blemishes upon its escutcheon, but the single fact that the metropolis of the South is located here, in a soil which for many years was most sterile in local institutions, is a strong argument that in other parts of the State there are sites only waiting the magic wand of good local government, business enterprise and capital, the opening of good roads, and the more thorough employment of the many modern means of internal communication, in order that they also may become centers of inland trade and emporiums for the commerce of many nations.

[1] P. F. O'Carroll, Esq., in Baltimore *Sun*, December 24, 1881. Judge Chas. E. Phelps, in a paper read before the Md. Hist. Society, on "Celtic Baltimore: Its Etymology," came to the conclusion that Baltimore signified "God's place," being derived from the two Celtic words, *Bal* = place, and ti-mor = Supreme Being. One antiquarian sees in *Bal*, a corrupted form of "Baal," the Phœnician divinity.

VIII

THE

Influence of the Proprietors

IN FOUNDING THE

State of New Jersey

JOHNS HOPKINS UNIVERSITY STUDIES
IN
HISTORICAL AND POLITICAL SCIENCE

HERBERT B. ADAMS, Editor

History is past Politics and Politics present History — *Freeman*

THIRD SERIES

VIII

THE Influence of the Proprietors IN FOUNDING THE State of New Jersey

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The Influence of the Proprietors in Founding the State of New Jersey.[1]

"We, the people of the State of New Jersey, grateful to Almighty God for the civil and religious liberty which He hath so long permitted us to enjoy, and looking to Him for a blessing upon our endeavors to secure and transmit the same unimpaired to succeeding generations, do ordain and establish this Constitution."

These words are the ordaining clause of the present constitution of New Jersey, which was adopted in 1844. They are not the introduction to the terms of an agreement; they begin no compact. They are a creative fiat; they call into being a law of laws for the commonwealth; they institute a government. But the people who thus ordain, who exercise this highest original faculty, are not themselves the product of a single creative act. The self-government here in full activity, the only real counterpart of the people, was a growth, to whose perfecting many agencies contributed.

The nature of an act done by an absolute monarch and that of the ordaining act of a self-ruling community, are nowhere more clearly contrasted than in the feelings of interest with which we regard the two. The former excites no curiosity as to the origin of its producing power. It has the same source as the commands of a wilful child, and is as single in motive; whereas the sovereign act of a people leads us to inquire by

[1] Read at Perth Amboy, November 25, 1884, the two hundredth anniversary of the establishment of the American Board of Proprietors of East Jersey.

what process the many individual wills have been wrought into the one will, which, with a mature consciousness, imposes laws upon itself. The enduring constitution of a free people, always implies a historical growth in that people.

The political life of the people of East New Jersey embraces five periods of varying length. The first, excluding the discovery and the taking possession of the territory, begins with the grants of 1664, respectively from the King to the Duke of York and from him to Berkeley and Carteret, and ends in 1682, the date of the transfer of soil and rights of government to the twenty-four Proprietors—a period of eighteen years. The second period was twenty years long, to 1702, the date of the surrender of powers of government to the Crown. The third period was that of the royal government from 1703 to 1776. The fourth from 1776 to the adoption of the Constitution of the United States in 1788. The last, the national period of ninety-six years.

Which one of these was the period distinctively formative of the political character of the people of New Jersey? The answer to this question does not lie upon the surface of the events of these divisions of the past, for strongly marked as are the lines which separate these periods, there is but one growth, in which they are all necessary factors; so complete is the unity of continuous life, that the history of one involves the consideration of all. Our investigation brings us face to face with this fact, that all these separate stages are vitally essential to the complete development, therefore in one sense equally essential, yet we are cheered in our further search by the reflection that there must have been a time whose peculiar relations to its past and future were more fully determinative of political character than those of any other period. Is there not in the life of every people a time, when the motives and thoughts and all the lines of social life of the past come together, and then all lengthen on into our present, so that if we trace them back they seem to have radiated from that point and further back all radiate toward that point, so that

viewed as a whole, the influences and causes and effects of the remote and intervening past there intersect? This is true of the great world history. The ancient nations are all merged in the Roman Empire; out of Rome all modern nations have emerged. The period of Roman supremacy was the point of intersection where the lines of all human activity crossed. Something of the same sort is true of this State community, whose formative point is to be found in the time of the Proprietors; the active principle in this case, however, was not Force, the world-conqueror, but the quiet beginnings of home rule.

The grants of 1664, and the "concessions" from the Proprietors, Berkeley and Carteret, began the work of founding the separate community. The grants fixed the boundaries of the future State as a distinct part of the realm, owing allegiance and having a right of appeal to the English Crown. Do we value the separate existence of our State? Let us be grateful then for the timeliness of the grant. Had it not come at this time, in all probability it would never have come. The concessions, besides granting as it were by grace certain freedoms and immunities, particularly religious rights, establish a general representative Assembly. The legislative powers granted to this Assembly were adequate to all the needs of the community, comprising the power to appoint a time for the meeting of the Assembly and its adjournment, to enact all laws necessary for the government of the Province, provided they were agreeable to the English constitution and not against the interest of the Proprietors or the concessions. The Assembly had the further power to erect courts and determine their jurisdictions, the power of taxation, of dividing the Province for local purposes, war powers and the power of naturalization. But these powers were not to be exercised independently of the assent of those who represented the Proprietors—namely the governor and a council appointed by him. The governor and his council were thus constituted a co-ordinate branch of the Legislature and they received by

the concessions some important executive and legislative functions to be exercised independently; and as though implying that they might exercise powers not expressly delegated, they were prohibited from acting contrary to the laws of the Province, and a section taken from the Magna Charta and the Petition of Right forbade their imposing any tax without the consent of the General Assembly. The concessions thus formed a fundamental law adequate to the settlement and government of the Province. They gave a guarantee of some of the most important rights, and they left to the people a large control of their local concerns. They rendered a distinct service by beginning in New Jersey the process of differentiating English self-government. Back of all, was the King and the Parliament—the English constitution, but there was a wide field for special law-making, which the orders of the King and the Acts of Parliament did not enter. In this field the New Jersey General Assembly had somewhat of the dignity of Parliament. There was an implied recognition of a difference in the political life of the Province, in that but one of the vital parts of the English constitution as found in the Petition of Right was lodged in the concessions—the principle of taxation by the legislative power alone. It was further prophetic of a new era that Carteret, who had held the Island of Jersey against the Parliamentarians to the very last, should, with Berkeley, another Royalist, adopt this most important principle which the Revolution had gained as part of the primal law of the new Jersey.

This earliest constitution was in the nature of a compact with the individual settlers, and afterwards, as they came to be represented in the Assembly, with the people as a body. But something else was needed to constitute the people within the bounds of New Jersey a body politic, in whom original political power might be said to inhere. This something was not the mere Act declaring and establishing independence, but the generating and gradual growth of a spirit to which independence in the fulness of time should not be an un-

natural act but a part of the regular process of development. The beginnings of such a growth were not directly supplied by the concessions which came from without. The new life must have its source in the people themselves.

The first evidence of an original political life in the people was in their restlessness under the operation of the concessions. The representatives in the Assembly very early insist upon a joint session with the governor and council, where their power from their superior numbers must over-rule that of the governor and his council. By successfully resisting this effort the representatives of the Proprietors secured to New Jersey in the earliest Assemblies the manifold advantages of two houses in legislation.

The next display of the popular spirit was in the refusal to pay the quit-rents stipulated in the concessions. This opposition was in the strictest sense illegal; so far as the concessions were building up the Province, it was disorganizing—the so-called disorganizing Assemblies of 1671 and 1672 going so far as to seek a virtual overthrow of the properly constituted provincial authority, through the choice of James Carteret as president of the country. But the value of this illegal resistance in awakening and strengthening in the people the power to perfect an organic law was two-fold; first, the imposition of quit-rents, even though sanctioned by the fundamental law, had something of a feudal nature, and it called up that spirit which the feudal system of the middle ages universally awakened, the spirit of resistance, a personal resistance, a defiance on the part of the individual. The tendency, then, was to strengthen individualism, individual character on its good side as well as its bad we shall find if we follow this influence far enough. The devotion to public liberty of New Jersey, like that of Virginia, has ever been infused with a marked zeal for personal freedom. This spirit in the southern state may be attributed in part to the isolation in which the planter lived. In New Jersey the series of early events connected with the Elizabethtown grants, the harassing

influence of the demands for the quit-rents and like causes, contributed also to the formation of the same characteristic. But as individualism grew, the sense of the value of government was not, in the end, impaired, and individual responsibility for it was quickened. A second result of the differences between the government of the first Proprietors and the people was the development of the town as an essential factor in the Province. Almost from the first these political units of the State had, through the grant of large prudential powers from the governor and council, a vigorous life. As distinct and integral political organizations the towns, whether together in the Assembly or in their separate town meetings, were made the instruments of opposition to the representatives of the Proprietors.

The various immediate objects of opposition to the governor and council were not gained either by the individual man or by the towns, and this failure was not without influence in teaching them real self-government. They learned that it was not the caprice of the individual, nor the shifting opinion of all within the circle, whose centre was the one market place. True, the towns had, by grant from the Proprietors, their special privileges, but these could not form a body of law for the Province nor supercede its necessity. So men and the towns find their way back to the concessions. The deputies to the General Assembly are still in opposition to the governor and council in 1681, but now they insist that the concessions are to be taken according to the letter, without any interpretation whatsoever; that the constituting of courts by governor and council, and the explanation of the concessions made in 1672, by Berkely and Carteret, are a breach of the concessions, and the deputies declare the inhabitants of the Province not obliged to conform themselves thereunto.[1]

The Assembly for the first time in the history of the Province was then dissolved by the governor, an act which the

[1] N. J. Archives, I., pp. 355, 356, 359.

deputies unanimously protested was contrary to the concessions and an innovation of the government. The beginnings of the power and the spirit of complete self-government were here manifest. The people deliberately chose the concessions as the basis of their political life.

In 1683 the deputies attempt to "disown" the concessions, but now the governor and council are strict in their adherance to the "foundation of government."[1] Thus the concessions, alternately favored and opposed, are rooted more firmly, just as that tree is more firmly rooted, upon which the wind blows from various quarters.

A happier evidence of the beginnings of the higher political life of New Jersey as a distinct community was afforded in 1680. The spirited opposition of the deputies to the governor of New York, when he attempted to usurp authority over the Province of New Jersey, the manly resistance of Governor Carteret to the same usurper, and particularly his letter in which he denies a right of levying duties in the interest of the Duke of York, without the consent of the New Jersey Assembly, unite for the time being, all the forces, to render an enduring service in the making of the State. The service was the greater because of the simultaneous action of West Jersey for the same noble end.[2] This effort of the two Provinces, successful in vindicating their rights to freedom from taxation was a triumph for the agencies which would one day demand independence for the reunited halves of New Jersey and for the united colonies, while the influence of the victory for equal commerce lived in New Jersey until the adoption of the Constitution of the United States. The action of Carteret in defending the jurisdiction of New Jersey against the encroachment of Andros, aroused a hostility to the latter in England, which brought about his recall and helped to awaken the spirit which later in England defended the cause of America.

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[1] Record of Governor and Council, p. 80.

[2] Smith's History of New Jersey, p. 117.

In the first period, then, this much had been done to form a new people. Under the concessions, the Province began to be settled; individualism as a necessary part of self-government gains greater significance; town government is begun and influences the growth of the embryo State, while the Province as a whole begins to be something more than a mere name; it is a part of the English realm, but a distinct part and not a dependency of New York.

When the rights of soil and of government were transferred to the twenty-four Proprietors in 1682, many of the conditions which are of universal value in the making of a State, were present. The time, the last quarter of the seventeenth century, was one of general political formation. The Thirty Years' War had run its disastrous course; William of Orange fought absolutism on the Continent, and the Revolution of 1688 began a new era in England; the Great Elector, after the battle of Fehrbellin, was laying the first foundations of Prussia. Only France was given over to absolutism, but by the revocation of the Edict of Nantes she gave in the Huguenots some of the best of formative elements to South Carolina. Massachusetts and the New England colonies began a new career, when the attempt at centralization by James II. failed and their charters were restored. In 1684, many of the colonies joined in a defensive league against the savages, the second of the minor prophecies of the great Union to come.

The young community shared in the influences of the general movement; and there were special conditions which favored her growth. A law of the General Assembly of 1676 speaks of the Province as being "in its minority."[1] Like a prince one day to be a sovereign, who attains his majority at the age of eighteen, so New Jersey after the first period of eighteen years, was ready to begin the work which should fit her for the higher duties and powers. Here was a

[1] Leaming and Spicer, pp. 120, 122.

people beginning to prosper, but hopeful rather than contented; of conflicting motives, but the motive to union always in the end prevailing; in close relations with nature, who imparted to them qualities which they could never lose but must transmit to their posterity. She gave them rich promises; "here is a brave country," writes Rudyard, the first Deputy Governor under the new Proprietors; "here is a gallant, plentiful country," writes Lawrie, his successor. Penn took a view of the land and said he had never seen such before in his life. "The people," said Rudyard, "are generally a sober professing people, wise in their generation, courteous in their behaviour, and respectful to us in office among them."[1] The people in accepting the early concessions, had "expectation," so they said in West Jersey, "of some *increase* of those freedoms and privileges, enjoyed in" England, and the expectation grew with the growth of the Province and with the change of the proprietaries. It was a tendency that could not be stayed until the people were, in their own phrase, "*owners of their liberty.*"[2] How was this tendency met by the twenty-four Proprietors? Whatever their theory was as to the necessity of a firmness of administration to gain their pecuniary rights, in other respects their conduct harmonized with the wishes of the people. In "a brief account of New Jersey, published in 1682, by the present Proprietors, for information of all inclined to settle in that country," they say that in the concessions, provision was made for liberty in religion and property in estates, and "we," they continue, "shall be ready and desirous to make such further additions and supplements to the said Constitution, as shall be thought fit for the encouragement of all planters and adventurers, and for the further settling the Colony with a sober and industrious people."[3] Whatever

[1] Smith, pp. 169, 170, 179.
[2] Ibid, pp. 120, 124.
[3] Smith, p. 542.

change, then, the Proprietors might make in the organic law could only be construed in the light of this promise, the spirit of which as well as the letter, bespoke the largest liberty for the emigrant. So too, the seal of the twenty-four Proprietors, as they undertook the duty of government, was in keeping with this natural character of the Province and of its people. Every official act of the twenty-four Proprietors received the stamp of this seal, on which were exquisitely engraved the emblems of plenty and of even-handed justice. Surrounding the emblems were these legends: "Righteousness exalteth a nation. Its God giveth increase." Thus every act of theirs testified to their recognition of a God-given increase of the fundamental law as well as of the fruits of the earth.

The letter in which the Proprietors announced to the people their purchase of the Province, breathes the same spirit. "We desire nothing more than to approve ourselves as you may find yourselves happy." "Your interest is now so bound up with ours that we cannot suffer if you prosper, nor prosper where you are injured." And they promise "everything that may be needful toward the good government and advantage of the Colony."[1]

The seal of the Proprietors was further indicative of the character of the new government. The seal of Berkeley and Carteret bore their coats of arms and thus suggested a personal government. The seal of the twenty-four was absolutely impersonal, so far as men were concerned; God alone was recognized as the author of the growth and exaltation of a nation. It was almost as though human direction were withdrawn, and abstract principles, free from the impress of the mind even of great men, were left to work their own work among the people. The Proprietors were rather the servants than masters controlling the principles of government which were becoming active in New Jersey. "It is

[1] Leaming and Spicer, p. 167.

not possible for you to understand," so writes Lawrie, the Deputy Governor, to the Proprietors, "what is for the good of the Province as I do that am here,"[1] and in response, the Proprietors adopt the act of the first of August, 1684, in which they acknowledge the necessity "*that there be full and ample power constituted in some persons in the Province, to do all things that may contribute to the good and advancement of the same.*" This instrument transfers immediate supervision of the Proprietors' interests and rights from England to commissioners in America.[2]

Another Act, giving ampler powers and more practicable conditions to the new American Board of Proprietors, and freer self-direction to the people, was adopted a few months later, *and two hundred years ago to-day.*[3] It is fitting that those who hold the power of the State in trust and representative citizens from all parts should commemorate these acts, for they were significant in the founding of the State. They were as important to the development of political power in eastern New Jersey, as "the vote," two generations before, by which in the transfer of the Massachusetts Company to America, "a commercial corporation became the germ of an independent commonwealth."[4] Under these Acts, the first full exercise within the borders of the State, of the proprietary power of revising legislation took place two hundred years ago the coming Thanksgiving day. "To all Christian people and others to whom these presents shall come," the American Board of Proprietors address their act confirming the laws of the past two years.[5] In the volume of seven hundred pages, containing these early laws and constitutions, it is the only Act so addressed. We may readily infer that

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[1] Smith, p. 178.
[2] Leaming and Spicer, p. 195.
[3] Leaming and Spicer, p. 198.
[4] Bancroft, Hist. of U. S., Cent. Ed. I. p. 275.
[5] Leaming and Spicer, p. 281.

the Deputy Governor and his fellow Proprietors who signed the Act, were conscious that it indicated a new adjustment of political forces. The Proprietors become as far as possible identified with the Province. The new Board share with the people in the making of the law, while with all citizens they are equally subject to the provincial law.[1] But we arrive at the full measure of the importance of this assimilation of proprietary and popular government when by the study of the events of the next half generation, we learn to know the principle of government, which the Board of Proprietors grew more and more to represent. It was neither of the three historic forms, monarchy, aristocracy or democracy. It stood for essentially the modern principle of the non-interference of government, the laissez faire, the hands-off theory, the least government the best. It gave the opportunity for the action of a self-determining power within the four bounds of New Jersey, by virtue of which, the inhabitants of that portion of the globe could as one body say with truth, a century and a half later, "all political power is *inherent* in the people."[2] It is true, the twenty-four Proprietors had prepared for the Province a new organic law—the so-called Fundamental Constitutions, which, though sanctioning in part, were designed to supercede the concessions, and they instructed their Deputy Governor to "order the new scheme of government to be passed in an Assembly."[3] But they tacitly acquiesced in its rejection. In a conference of the deputies with the governor and his council on the 19th of April, 1686, Governor Lawrie made inquiry "of what answer" they gave touching the scheme of government laid before them a few days previously. The deputies answer "*that they apprehended the same did not agree with the Consti-*

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[1] Scot's model in Whitehead's East Jersey under the Props., pp. 398, 447, 449.

[2] Constitution of 1844.

[3] Leaming and Spicer, p. 175.

tution of this Province, and that they understood that the same were nowise binding, except passed into a law by the General Assembly." The governor's council had already given it as their sense "*that the same did not agree with the Constitution of these American parts.*"[1]

The governor did not press the matter, nor did the Proprietors further insist on it, and in this simple way the great act was done, at once asserting and confirming the ordaining power. The people of East New Jersey had determined that by their own authority their organic law should be.

By refusing the Fundamental Constitutions and planting themselves on the concessions, the people secure all that had been gained in the first period, and the Proprietors, sharing in this essentially ordaining act of the people, the rights of self-government became indefeasible. It was only natural, then, that in an act passed thirteen years later, declarative of rights and privileges, many rights and privileges should be included, which had hitherto never found expression in the Province.[2] The people were creating the organic law. It was a solemn act. "*The whole House of Representatives*," so runs the record of the governor and council, "*came before this Board and gave in the Bill of Rights . . . passed their House, which was read here and passed this Board.*[3] This act, including many of the provisions of the concessions, has also many features in common with the government which the people ordained in 1776.

With this act, which bears the date of the 13th of March, 1699, together with that of the 19th of April, 1686, the work of the Proprietors in helping to lay the legal foundation of the State was complete. It was an anomalous government. An idea grew up after the revolution of 1688

[1] Record of Governor and Council, pp. 125, 126, 128, 131.
[2] Leaming and Spicer, p. 368.
[3] Record of Governor and Council, p. 219.

that it was no rightful government. King William contested its title, and the people of East New Jersey petitioned the Crown against the Proprietors, and factions sprang up among themselves. Of the original Proprietors, but *four* were left in 1702 to surrender what they admitted in the instrument of surrender was a pretended right to government, but the fact remains, that better than they, or those about them, knew, they built for all time.

Three-quarters of a century must pass before independence was declared, but the people of New Jersey were already capable of an independent political life. In fact, from 1689 to 1692 there was no general government. The local administration of law secured the peace and welfare of the whole Province. In the contest with the royal governor, Lord Cornbury, in 1707, the representatives of the people reject with abhorrence the charge of the Council that they purpose throwing off their allegiance and revolting from the Crown of England. So they abhorred the thought, even after the War for Independence was begun, but they were no less capable of independence had it come two generations earlier. We may note that in this same reply to the complaint of the Lieutenant-Governor and the Council to the Queen, the people do not disclaim the right to judge, as was charged, whether royal orders conformed to law.[1] The right of self-rule, which they had gained in the time of the Proprietors and under the influences of their government, they kept until all the Colonies were equally ready to assert with them that this right should be national in America.

But we find evidences elsewhere than in the growth of the fundamental law, that under the influence of the Proprietors the State, as we know it, was gradually forming.

No stronger influence moulds the life of the people of a State than that which comes from its minor political divisions. The town and the county have shaped the life of the States of the Union. In this respect there are three classes

[1] Smith, pp. 347, 386.

of States; those in which the town is the political unit—the six States of New England; the second, those in which the county is the unit—the States of the South; the third, those of the "compromise system," as it has been called—a mixed organization of county and township prevailing in the Middle States and the West.

Town government sprang into a vigorous, self-directing life at the time of the first Proprietors,[1] and county government had its feeble beginnings;[2] but it was only in the time of the second proprietary government that the two organizations grew into a composite whole.

The temptation is great to dwell upon the history of this phase of State development from this time on; to show how the functions of the two local divisions were adjusted; to point out the unconscious beginnings of the forms and harmonies which exist to-day, but the present purpose of our study will not admit of a statement of its every result. Only in general, it may be said, that to this period is due the founding of that system which, more than any other influence, gives individuality of character to the self-government of the State.[3]

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[1] During this period local government was exercised by virtue of charter rights in seven towns, namely: Bergen, Elizabeth, Newark, Middletown, Piscataway, Shrewsbury and Woodbridge.

[2] By a law of the General Assembly of the 13th of November, 1675, the towns were grouped into counties with no very definite limits, and with the sole purpose of erecting courts. Leaming and Spicer, p. 96.

[3] A view of the methods of *taxation*, as found in the tax laws of the Proprietary period, will, perhaps, best show the germination and gradual growth of local government in New Jersey.

CONCESSIONS.

1664.—By the Concessions the General Assembly has power to lay taxes upon lands or persons within whatever *local divisions* it may erect within the Province. (Leaming and Spicer, p. 16.)

LAWS OF GENERAL ASSEMBLY.

May, 1668.—First tax, thirty pounds—five pounds to each *town*—in country pay to be delivered by inhabitants to Jacob Mollins, of Elizabethtown. (L. and S., p. 81.)

The constituting of courts is another important formative element. An authority not lightly to be questioned says that Lord Cornbury "is entitled to the credit of having laid the foundation of our whole judicial system."[1] But the beginnings of it seem to date from the legislation of this period. Here we have the Common Law Courts in town[2] and county,[3] a Supreme Court for the Province,[4] distinctions between law and equity jurisdiction;[5] provisions for appeals on account of errors or other grounds,[6] for regular prosecutions and issuing of processes[7]—in short, a systematization of the administration of justice.

November, 1675.—*Towns* and *plantations* grouped into *counties* for the sole purpose of erecting courts. These counties have no very definite bounds, and they receive no names. (L. and S., p. 96.)

December, 1675.—*Provincial Treasurer* appointed, to whom *town constables* are to bring in the rate. (L. and S., pp. 103, 104.)

December, 1675.—Assembly proposes to raise fifty pounds, Governor's arrears, by *subscription* to be paid to constables of *towns*. (L. and S., p. 104.)

April, 1676.—*Three select men* to be chosen by the freeholders of every *town* to assess Governor's arrears not subscribed. (L. and S., p. 117.)

October, 1676.—Constables of every *town* to receive and compel payment of rates levied by the General Assembly. (L. and S., p. 121.)

1678.—Country rates levied upon land. Governor's salary paid by poll taxes. (L. and S., pp. 129, 130, 125.)

[1] Field's Provincial Courts, Coll. of N. J. Hist. Soc., Vol. III.

[2] An elective Court in every town having cognizance of cases to the value of forty shillings, a Justice of the Peace to be one of the Court. Learning and Spicer, pp. 99, 100, 229.

[3] In every county, Courts of Sessions or County Courts, whose sessions were at first annual and afterwards biennial and quarterly. Learning and Spicer, pp. 96, 230, 268, 347.

[4] A Court of Common Right with original and appellate jurisdiction, to have cognizance "of capital, criminal, or civil causes of equity to be the Supreme Court of the Province," with quarterly sessions. Learning and Spicer, p. 232. In W. J., 1693, a Supreme Court of Appeals, Learning and Spicer, p. 517, and a Court of Oyer and Terminer, Learning and Spicer, p. 520.

[5] Learning and Spicer, pp. 232, 348.

[6] Learning and Spicer, p. 232.

[7] Learning and Spicer, p. 253.

Other influences came from the people of that day to determine what the people of this day should be. The very homeliness of much of the legislation of those twenty years shows that self-rule was thrusting out its roots into the best of soil, and yet on the other hand, the General Assembly of this feeble Province could rise to the dignity of enacting in a separate law, the thirty-ninth and fortieth chapters of the great Charter, "the essential clauses," as Hallam calls them.[1]

In the formation of this body of law, there were many conflicts; there was turbulence at times in the Province, but the greatest of living historians has said, that "all progress

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March, 1682.—"For the better governing and settling courts," in the Province, the General Assembly divides it into four *counties*, which receive names and definite bounds. (L. and S., 229.)

1682.—Justices of *County Court of Quarter Sessions* impowered to assess tax for building a jail in each *county* and a pound in every *town*, and to appoint collectors and receivers of this tax. (L. and S., p. 268. Compare Allinson's Laws, p. 14.)

December, 1682.—Tax of fifty pounds apportioned among the *counties*, to be assessed in each *county* by six men appointed by the Assembly, upon improved lands and stocks. *Town constables* to act as *collectors*, and to pay the sums collected to the *Treasurer of the Province*. (L. and S., p. 274.)

In 1684 the West Jersey Assembly impowers each *tenth* to lay and levy road taxes, and to choose six assessors and two collectors of a general tax. (L. and S., p. 494.)

April 19, 1686.—Four or five assessors to be chosen by the people of each *town* to levy rates for highways laid out by *County* Commissioners, (named by the General Assembly, L. and S., p. 256), and taxes for all other public charges within the respective limits of the *towns;* the rates and taxes so made to be presented to the *Court of Quarter Sessions* in the respective *counties*. The Justices of the Court to approve, amend and confirm them with the consent of the majority of the assessors. (L. and S., p. 294.)

The above act, in a large sense the beginning of combined *town* and *county* action in the matter of *taxation*, was passed on April 19, 1686, the same day on which the Deputies refused the Fundamental Constitutions.

The birth of the mixed town and county system, the special form of New Jersey local rule, was thus coincident with the birth of self government in the Province as a whole. (Record of Governor and Council of East Jersey, 1682–1703, pp. 131, 132.)

[1] Leaming and Spicer, p. 240.

comes through conflict." It is not true, indeed, that peace has her victories, *because* war has had hers. A recent address [1] before the New York Chamber of Commerce is most suggestive in this regard in respect to our national wars. Does not the same hold true in the smaller sphere?

On the freedom of religion, the concessions allowed no restriction, not even by "any law or statute or clause contained, or to be contained, usage or custom of the realm of England," but the people in their Law of Rights in 1699, follow the leading of the English Bill of Rights of 1689, and decree intolerance of the Roman Catholic religion. In the Constitution of 1776, too, civil rights are guaranteed to

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This Act was modified nine years later, 1695, but only to facilitate its operation. It was, therefore, thereby virtually confirmed. (L. and S., p. 355; Compare *inter al* Allinson's Laws, pp. 14, 35, 60, 115; Revised Statutes, Sec. 12, p. 129.)

May, 1688.—To withstand invasion of the French, specific tax on land, cattle, horses, swine, and poll tax on male persons of sixteen, to be levied and collected by *County* Commissioners appointed by the Assembly. Constables of each *town* to receive estimates of taxable property and deliver them to their respective *County* Commissioners. Taxes to be paid by the inhabitants to the respective *County Treasurers* appointed by this Act for the first time by the General Assembly. (L. and S., p. 306.)

1692.—Method of levying and collecting tax similar to that of 1688. (L. and S., 321.)

In this year the West Jersey Assembly empower each *county* court to appoint County Collectors of a poll tax. (L. and S., p. 510.)

1693.—The county growing in importance. Each *town* in the county was empowered to choose one or more men to join with the justices of the county court, annually, to adjust the debts of the *county* and assess taxes for their payment. (L. and S., p. 333.)

1693.—King's tax for defence against the French. Twenty men to be raised proportionately from the five *counties*. To maintain these soldiers a tax of four hundred and thirty pounds in specifies to be raised. This Act appoints one Commissioner for each *town*, who receives from the town constable estimates of all ratables in the town. These Commissioners meet in a body at Perth Amboy and equalize the assessment. The taxes collected by *County* Receivers appointed by this Act. (L. and S., p. 334.)

[1] That of Mr. Evarts, at the one hundred and sixteenth anniversary dinner of the New York Chamber of Commerce.

Protestants alone. Only in the Constitution of 1844 has New Jersey turned to the times of the Proprietors and brought back again the fearless spirit of complete religious liberty.

For education, the earliest town charters granted by the Proprietors, provided; in Woodbridge, one hundred acres were to be laid out for the maintenance of a free school,[1] and school lands were to be exempt from quit-rents. The towns established schools, and laws of 1693 and 1695 provided for rates and the regulation of schools by selectmen.[2]

We must not leave out of sight the influence of the Proprietors in gathering this provincial population from many

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October, 1694.—Act for the appointment of *County Treasurers*. The justices of each *county court* to appoint at their discretion a County Treasurer to disburse county funds in paying for the destruction of wolves, providing for the poor and orphans and defraying the county debts. (L. and S., p. 350.)

1695.—One hundred and fifty pounds in silver, proportioned among the *towns* of the Province and the counties of Monmouth and Somerset, to be levied upon all estates real and personal, as each *town* and the two counties named shall adjust the rates. General Assembly appoints the collectors, vacancies among whom are to be filled by the *town*, or in the case of Monmouth and Somerset by the county. (L. and S., p. 353.)

1698.—An Act for making town rates to defray town charges. Each *town* chooses three men to assess for (1) representatives' wages, (2) charges about highways, (3) rates for the poor, (4) constables' wages, (5) killing wolves, (6) repairing burying places, (7) schools, (8) pounds, (9) clerks' wages. This assessment to be presented to any justice of the peace of the *county*, who may approve or amend the same with the consent of two of the three persons chosen as above. (L. and S., p. 372.)

1698.—General tax of six hundred and seventy-five pounds. The Act introduces a system of taxation on real estate by polls and specifics nearly identical with that later adopted by the State Legislature. (Compare Gordon's Gazetteer, pp. 57, 58; also Laws of West Jersey, 1684, 1685, 1693, 1696, 1697, 1700; L. and S., pp. 494, 505, 521-2, 549, 561, 574.)

By this Act an assessor or commissioner was named by the Assembly for each *town*. These assessors to meet in the capital of the Province to equalize assessments. They also serve as collectors and receivers. (L. and S., p. 376.)

[1] Whitehead's East Jersey under the Proprietors, p. 287.

[2] Leaming and Spicer, pp. 328, 358.

parts—from New and Old England, from Scotland, from Ireland, to join them to the Dutch already here to make the one people.

The latest writer on American Colonial History says that the colonists of New Jersey had a strong respect for vested rights.[1] May we not attribute the feeling to the experience, which grew out of the early and safe system of the proprietary grants, and, on the other hand, of the disputes, in some parts, which enforced the necessity of secure titles?

The contest the people had to establish their fundamental law, taught them the value of a written constitution and the absolute need that law should conform thereto. Though it grew up in part by legislative enactment and though the constitution of 1776 carries the implication of possible legislative amendment, yet in a spirit, born as we may believe in those early days, and certainly expressed in the earliest constitution of West Jersey, Chief-Justice Brearly in 1780, gave a decision of prime historical importance. Other States than New Jersey have been called the formative centres of the various influences which have combined to bring about the one great result—this mighty union; but New Jersey has at times shown the way. This decision of her Supreme Court was the first of the series which established the principle and at last made it a part of the Constitution of the United States, that an unconstitutional law is no law and it is the function of the judiciary to say so.[2]

The second occasion when New Jersey showed the way to her sister States, was when she sent her delegates to the Annapolis Convention in 1786. This convention was called to secure uniform regulations of commerce in the Articles of Confederation, then the Constitution of the Union. New Jersey was not unmindful of the struggles she had had, in

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[1] Lodge's English Colonies in America, p. 278.

[2] The decision is referred to by Ch.-J. Kirkpatrick, in State *vs.* Parkhurst, IV. Halstead, p. 414.

the times of the Proprietors to secure from New York a commerce rightfully her own, but rising from that consideration, to her perhaps more important than to any other State, for she was like a cask flowing at both ends, tapped by New York and by Philadelphia, she suggested that the amendment should include, besides a power over commerce, "other important matters." The convention caught at the suggestion, and Hamilton, the herald of the better union, proclaimed it as the basis of the call to the Convention at Philadelphia, which gave us the Constitution of the United States.

In the times of the Proprietors we do not find in New Jersey many germs of an American Union, though in one or two cases the Assembly, "sensible of brotherly love to our neighbors," voted men and money for the war on the frontiers against the French. This spirit was with New Jersey of somewhat later growth; it came in royal times, but in the war for Independence, New Jersey ranked with Connecticut next to the first in the number of men she furnished, and other evidences were not wanting of a zeal for the good of the whole Union. But in the formation of the "more perfect union," she represented rather the principle of localism; the home rule of those early days had grown into the idea of the indestructibility of the State. This idea she brought into the Federal convention and around the banner of the "Jersey Plan," Livingston, Paterson and Brearly fought for it. When the existence of the principle was assured by the grant of equality of State representation in the Senate, how gladly did these, her champions, leap forward to give to a nationalism based upon localism, ample powers for the greatest work that ever fell to the lot of one people.

The Legislature of New Jersey had been the first in America to apply to the Union, the phrase of Montesquieu—"a Federal Republic." Unanimously her people ratified the Constitution of the United States, in which it was made real.

The States of Greece, which one may call the creative States, those which made her the leader of the civilization of

the world, had together nearly the same area as New Jersey. By the coast line and the lines of the hemming mountain ranges, the forces of their life were turned inward; so New Jersey was confined by careful bounds and her life grew from the forces concentrated within her borders. When absolutism swept down upon Greece from the East, she repelled the Persian invader on the plain of Marathon. On the plain of Monmouth, the humble commonwealth, aided by her sister States, fought, if not the decisive battle, yet the one prophetic of the final overthrow of English absolutism; for after it, Frederick the Great said, "America is lost to England." But the destroyer of Greece came from the West. The self-government of Greece, which was her glory and the cause of her power, was engulfed in the imperialism of Rome. When the imperial idea arose in the Western Hemisphere, promising a new nation of gigantic proportions, and with the possibilities of unbounded continental strength, with the aid of the other pent up States, all but one proprietary, New Jersey, in the Federal Convention, lodged in the foundation of the indissoluble Union, the integrity of the individual State. New Jersey was never enrolled among the World-States, but happier than Greece she insured to herself an unending future. She made her continued existence the condition and the cause of imperial strength. Largely through her influence and further back, the influence of her founders, *local* and *national* self-government are blended, yet each keeps its identity. The fruits we enjoy grow on the tree of this self-rule:

> ——the one great tree, that up from old time
> Growing, contains in itself the whole of the virtue and life of
> Bygone days, drawing now to itself all kindreds and nations,
> And must have for itself the whole world for its root and branches.

IX-X

AMERICAN CONSTITUTIONS

JOHNS HOPKINS UNIVERSITY STUDIES
IN
HISTORICAL AND POLITICAL SCIENCE

HERBERT B. ADAMS, Editor

History is past Politics and Politics present History — *Freeman*

THIRD SERIES

IX-X

AMERICAN CONSTITUTIONS

The Relations of the Three Departments as Adjusted by a Century

BY HORACE DAVIS
San Francisco, California

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AMERICAN CONSTITUTIONS.

I.

All the nations sharing our form of civilization make a three-fold division of the functions of government into legislative, executive and judicial departments. On the proper separation and independence of these departments rest in a great measure the liberties of the people. The union of all these departments under one authority constitutes a despotism: while in different and independent hands they form checks upon each other against usurpation. To adjust carefully the balance of these powers, to define their fields of action, to bestow on each independence and a power of self-defence, is the supreme effort of modern governmental science. Our fathers inherited from Great Britain the idea of this three-fold division of government, and introduced it, although imperfectly, in their early constitutions.

My object in this paper is to present a brief historic sketch of the change in the relations of these departments, which has been silently going on in the United States for the past century. In the State Governments, the numerous alterations in their constitutions since 1790 have steadily enlarged the powers of the Executive, and cramped and limited the functions of the Legislatures. But, on the other hand, in the Federal Government, without constitutional amendments in this particular, Congress, with the natural aggressiveness of popular bodies, has encroached somewhat upon the field of Executive power; while everywhere, in both National and State Governments, the Judiciary has gained vastly in power

and importance. Let us trace these changes, beginning with the State Constitutions.

There have been substantially three distinct strata of government in the thirteen old colonies, each stratum quite marked in its character, though having many things in common with the others: first, the colonial governments; second, the revolutionary constitutions adopted during the War of Independence; third, the modern forms of government. During the first period, "the good old colony times when we all lived under the King," nearly all the colonies were ruled by Royal Governors, representing in miniature the dignity and power of his British Majesty. The Governor appointed all the officers, including the Judiciary; he had command of the land and naval forces, and possessed an unqualified veto on all legislation. The exceptions to this type will be noted hereafter. In the second period, the people, stung by the exactions of an irresponsible executive, nervous with fear of one-man rule, rushed to the other extreme, and placed all real power in the hands of the Legislature, springing directly from the people. The balance was again disturbed, the pendulum swung clear to the other end of the arc. The power of the Legislature in many States was almost as absolute as that of the British Parliament, without its conservative elements. Wise men trembled for the permanence of the government, and Madison and Jefferson have left us the record of their fears. But the calm judgment of the people prevailed over their alarms. Slowly they rebuilt their hasty work, readjusting and poising the great structure. This has been the work of the third period, to balance the powers of the government; to limit and define the functions of the three great departments, and establish their independence within proper boundaries, so that I believe our State Constitutions are to-day as a whole the most perfect frame-work of government, for men living in a Democracy, that human skill has ever devised. Returning to the first period, a brief notice is demanded of

The Colonial Governments.

In the first volume of Story's Commentaries on the Constitution can be found a sketch of them; Bancroft's United States gives fuller details. Story divides them into three classes:

1st. Charter Governments, including Massachusetts, Rhode Island and Connecticut.

2d. Proprietary Governments, to which belong Pennsylvania, Delaware and Maryland.

3d. Provincial Governments, comprising the remaining seven colonies.

Each colony had a Legislature elected by the people, suffrage being usually limited to the freeholders. Pennsylvania and Georgia had only a single legislative body, but the remaining eleven colonies had each a higher branch, usually called the Council, which was appointed by the Governor, except in Massachusetts, Rhode Island and Connecticut, where it was chosen, directly or indirectly, by the people. The Governor was appointed by the Crown or the Proprietaries, except in Rhode Island and Connecticut. These two colonies enjoyed the exceptional privilege of choosing their own Executive. Thus the Governors in eleven colonies were independent of the people, while their powers were very extensive. They were commanders-in-chief of the armed forces by land and by sea; they appointed all officers military and civil, including judges; they appointed the Council and could suspend it; they could assemble or dissolve the Legislature; they had an unqualified veto on all laws, except in Pennsylvania; and they all had the power of pardoning offences. Besides these broad restrictions on popular government, the Crown claimed the right to veto all laws and to entertain appeals from the Courts of last resort in the colonies. In Rhode Island and Connecticut, however, under their peculiarly liberal institutions, the Legislatures appointed all officers, civil and military, and the Governors possessed no veto

power; while in these two colonies and Maryland, the laws needed not be approved by the Crown.

Such were the general outlines of the Colonial Governments, at the outbreak of the War of the Revolution. Although the Crown claimed great power, the laws were administered in a manner so liberal and humane that the people were contented, and there was on the whole but little complaint, till the effort made by the British Parliament, under George the Third, to tax the colonies. Then came the outbreak of the storm of rebellion, and the union of the colonies in a Continental Congress. I need not follow the political history of the period farther than as it bears directly upon my subject. The Congress in the fall of 1775 advised the colonies of New Hampshire, South Carolina and Virginia to form governments adapted to the necessities of the times, and on the 10th of May, 1776, by motion of John Adams, adopted a resolution that "Each one of the United Colonies, where no government sufficient to the exigencies of their affairs had as yet been established, should adopt such government, as would, in the opinion of the representatives of the people, best conduce to the happiness and safety of their constituents and of America."

In accordance with the spirit of these resolutions, all the colonies placed their governments on a new basis. Rhode Island simply declared her independence, and continued under the forms of her Charter Government till 1842. Connecticut adopted a brief bill of rights, and continued the old form of Government till 1818. The other eleven colonies, in the course of a very few years, adopted new constitutions. Some formed provisional instruments, which were soon replaced by more permanent ones; others rejected the work of their first conventions; but by 1784 the entire eleven had formulated their ideas of republican institutions, and adopted them as the basis of government.

The germ of the written constitution is found in the Colonial Charter governments, and the reader will notice that

some of the colonies found these early and simple forms sufficient for their needs for many years after their separation from the mother-country. It was four years after the Declaration of Independence before Massachusetts adopted her first State Constitution; while Connecticut continued under her Charter forms for 42 years, and Rhode Island 66 years, simply substituting the authority of the people for that of the king.

To the instruments adopted during the War of the Revolution I would call special attention. Crude, ill-digested and ill-balanced as they seem to the historical student of to-day, they are, so far as I know, the first successful efforts to form republican governments upon written constitutions. The conception of an instrument creating the government, and yet restraining it, giving it life and power, and yet limiting and balancing those powers, an instrument which even the people cannot override, except by prescribed forms, this conception was first made a practical success in America and in these constitutions. The British Constitution is an unwritten code of political customs sanctioned by time and protected only by the conservatism of a privileged class, and the loyalty of the people. "Parliament," says Cooley, "exercises sovereign authority, and may even change the constitution at any time—but in America the will of the people, as declared in the constitution, is the final law which governs the legislative body equally with the private citizen." I have said these early constitutions are marked by an undue preponderance of the Legislature, entirely unsettling the balance of the government. As showing how different were the estimates then held of the functions of political machinery from the notions of modern times, I may add, that while the simplest constitutional amendment must to-day be submitted to direct popular vote for ratification, most of those early instruments were both framed and adopted by the Legislatures, and where they were framed by special conventions, they were, with one or two exceptions, *adopted* finally by the same conventions,

and it was not held necessary to submit them to popular vote.

The same confusion prevailed regarding the Confederation of the States which was formed about this same time. That government,—if such it could be called, consisting as it did of a Congress solely, having neither executive nor judiciary,—was never submitted to the people of all the States, but was ratified in many of them by the Legislatures alone, a fact commented on by Madison in the *Federalist*, No. 43, in these words: "A compact between independent sovereigns, founded on acts of legislative authority, can pretend to no higher validity than a league or treaty between the parties;" and Edmund Randolph, in his opening speech before the Constitutional Convention at Philadelphia, in 1787, said very truly, "The Confederation was made in the infancy of the science of constitutions."

II.

CONSTITUTIONS OF THE REVOLUTIONARY PERIOD.

In considering the Constitutions of the Revolutionary period, a brief summary of those provisions relating to my subject may be found in Bancroft's United States, Vol. IX., Ch. 15, and in the *Federalist*, No. 46; the full text of the instruments themselves may be found in the two volumes entitled "Charters and Constitutions," published by the United States Government in 1879. No words of mine can give their spirit so well as the pointed language of Madison in the Convention of 1787. He said, "Experience proves a tendency in our governments to throw all power into the Legislative vortex. The Executives of the States are little more than ciphers; the Legislatures are omnipotent. If no effectual check be devised on the encroachments of the latter, a revolution will be inevitable." He might have derived some consolation from the fact that the States which had

enjoyed the most liberty as colonies preserved a juster balance of powers in their constitutions, while the latest-framed instruments showed a positive improvement on those of earlier date, as if a healthier sentiment had already begun to prevail. But let us examine the documents themselves.

First notice the restrictions of the power of the Executive and his dependence on the Legislature. In nine out of thirteen States, the Governor was *chosen* by the Legislature. Only in the four New England States was he elected by the people; and his term was the shortest possible, being in ten States only one year and nowhere over three years. To provide still further against the designs of a cunning Executive, the six Southern States restricted carefully his re-election, providing that he might hold office not more than two or three consecutive years, when he should be ineligible for three or four years. To control his action even more, there was an Executive or Privy Council in every colony, whose advice and consent were required to all important acts. This council was usually appointed by the Legislature, and sometimes required to be from its own members.

In eleven States, the Governor had no veto whatever on legislation; in Massachusetts he had the usual qualified veto; in New York he, together with the Supreme Court, formed a Council of Revision, which wielded a veto power. In the matter of pardoning offenses, in five States the Governor had the pardoning power unrestricted; in four States he could only exercise it with the consent of the Council or Legislature; in Georgia the power belonged to the Legislature alone. The appointing power is one of the chief prerogatives of the Executive. In not one of the States did the Executive wield such a power singly. In Georgia all officers were elected by the people. In three States they were chosen entirely by the Legislature; in four States, mainly by the Legislature; in some, by the Governor and Council; in New York, by the Legislature through an Appointing Committee.

"The Legislature," says Bancroft, "was the centre of the system. The Governor had no power to dissolve it, or either branch. In most of the States all important civil and military officers were elected by the Legislature. The scanty power intrusted to the Governor, wherever his power was more than a shadow, was still further restrained by an Executive Council. Where the Governor had the nomination of officers, they could be commissioned only by consent of the Council." He might have added, that the Governor himself was generally elected by the Legislature; that in many States the Legislature could remove any officer; that in some States these bodies held or shared the pardoning power; and, most singular of all, in five States they exercised extensive judicial powers, generally sitting as a Court of last resort.

Warnings of the Revolutionary Statesmen.

And yet the statesmen of that day had a full understanding of these defects. Listen to Madison, in the *Federalist:* "The accumulation of all powers—Legislative, Executive and Judiciary—in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed or elective, may justly be pronounced the very definition of tyranny." After comparing at length the provisions of these State Constitutions, he says: "They carry strong marks of the haste and still stronger of the inexperience under which they were framed, and in some instances the fundamental principle under consideration has been violated by too great a mixture or even an actual consolidation of the different powers." . . . "The Legislative Department is everywhere extending the sphere of its activity, and drawing all power into its impetuous vortex." . . . "The founders of our Republics seem never to have recollected the danger from Legislative usurpations, which, by assembling all power in the same hands, must lead to the same tyranny as is threatened by Executive usurpations." . . . And he quotes from Jefferson's Notes on

Virginia the following passage relative to the same defects in the Virginia Constitution: "All the powers of the government—Legislative, Executive and Judiciary—result to the same Legislative body. The concentrating these in the same hands is precisely the definition of despotic government. It will be no alleviation that these powers will be exercised by a plurality of hands, and not by a single one. . . . An elective despotism was not the government we fought for, but one which should not only be founded on free principles, but in which the powers of the government should be so divided and balanced among several bodies of magistracy as that no one could transcend their legal limits without being effectually checked and restrained by the others."

I cannot better close this part of my subject than by quoting the incisive words of Bancroft, speaking of the spirit which permeated the Articles of Confederation, formed at this very period. "The Confederacy was formed under the influence of political ideas which had been developed by a contest of centuries for individual and local liberties against an irresponsible central authority. Now that power passed to the people, new institutions were required, strong enough to protect the State, while they should leave untouched the liberties of the individual. But America, misled by what belonged to the past, took for her organizing principle, the principal of resistance to power, which in all the thirteen colonies had been hardened into stubbornness by a succession of common jealousies and struggles." Of all the instruments formed at this period, the Massachusetts Constitution of 1780 was by far the best, maintaining the most just balance of power between its departments; and this alone survives, though it has been materially amended. The Federal Constitution, fortunately, was not shaped till 1787, when the evils of these one-sided governments had become evident, and therefore it received more harmonious proportions.

In 105 years, from 1776 to 1880, inclusive, just 105 constitutions, counting in the Articles of Confederation and the

Federal Constitution, had been adopted by the people of these United States, an average of one each year. Of these, 45 belong to the eleven States in Rebellion, and this excessive proportion is partly due to their unsettled condition at the close of the civil war. Throwing out these States, the average age of the defunct instruments was about 27 years. There are, however, eight States which have each lived over half a century under one constitution; five New England States under their present forms, Massachusetts 105 years, New Hampshire 93, Vermont 92, Connecticut 67, and Maine 65; Rhode Island from the issuing of her charter to 1842, New Jersey 1776 to 1844, and Kentucky 1799 to 1850. In the above figures I have taken no account of constitutions formulated by conventions and rejected by the people, nor of the innumerable amendments, some very important, which have been adopted or rejected.

Massachusetts bears off the palm for conservatism, living 105 years under one instrument; Kansas for the most frequent changes, having four constitutions in five years, from 1855 to 1859; some of which, however, must be credited to border wars and squatter sovereignty. Eight States are living under their original constitutions. I give them in order of age: Massachusetts 1780, Maine 1820, Rhode Island 1842, Wisconsin 1848, Oregon 1857, Minnesota 1857, Nevada 1864, and Colorado 1876. Four States have each had five successive constitutions: Georgia, South Carolina, Texas and Virginia. Louisiana takes the prize for number, having adopted her sixth constitution in 1879. These figures do not include any changes that may have taken place during the rebellion, under the Confederacy, from 1861 to 1865.

Under the early revolutionary constitutions, the Legislature soon began to invade the other powers of the government. Madison said, in 1787: "The tendency of republican governments is to aggrandise the Legislature at the expense of the other departments." The nearer the people, the greater the audacity of aggression. This tendency was noticed very

early; its progress is marked in the *Federalist*, No. 47, as it manifested itself in New York and Pennsylvania. Soon a desire for its correction began to be seen; first conspicuously in the New York Constitution of 1846. This modern spirit shows itself by separating the functions of the three departments and making each independent, so far as it can be done; it is distinguished everywhere by a restriction of the Legislature, an increase of Executive power and by independence of both Governor and Judges. I cannot consider each of these instruments in detail, but will only point out their general features; and I should add that this review includes the Louisiana Constitution of 1868, but not that of 1879, of which I had no details.

III.

MODERN STATE CONSTITUTIONS.

To-day the Governor is everywhere chosen by the people directly, instead of through the Legislature; his term has generally been much lengthened, the old term of one year being retained in only four New England States, while in fifteen States it has been lengthened to two years, in two States to three years, and in seventeen States, including nearly all with late constitutions, to four years. At the same time, the old restrictions on consecutive terms and re-election have been generally abrogated, being retained in only eight States to-day. The veto power has been restored, and at present in thirty-four States the Governor has the usual qualified veto on legislation. In nine of these, however, the veto may be overruled by a bare majority of each house in the Legislature. Four States—Delaware, North Carolina, Ohio and Rhode Island—have absolutely no veto. As the Legislature is apt to crowd much business into the last days of its sessions, twenty States, to prevent crude and hasty legislation, allow the Governor some time after the adjournment to consider whether he will sign or veto a bill, and thirteen States permit

him to veto individual items in an appropriation bill; of this I will speak presently more at length. The Privy Council has been abolished in all but three States, and in these it is no longer chosen by the Legislature, but by the people, and its control over the Governor is much curtailed.

The appointing of officers has been generally taken from the Legislature. Most of the officers are chosen by the people; where this is not the case, they are usually appointed by the Governor and confirmed by the Council or the upper house of the Legislature. The pardoning power is now everywhere vested in the Governor, or the Governor acting with the advice of either the Council or the Courts—except in Connecticut, where the Legislature retains the power. In most of the States the Legislature is forbidden to increase or decrease the salary of the Governor during the period for which he was elected. Such are the leading points in which the power and independence of the Executive Department have been restored. The Judiciary has also been placed upon a new footing. The Legislatures have been stripped of their judicial functions, except in cases of impeachment, and the Judges, instead of being elected by the Legislatures, are now, with the exception of four States, chosen by the people, or appointed by the Governor and confirmed by the Council or Senate. The relations of the Judiciary to the other great departments of government will be more fully treated hereafter.

Limitations upon Legislation.

Not satisfied with this transfer of powers to the other branches of the government a general desire has grown up to curtail legislation, and a new system of checks upon lawmaking has been devised, giving rise to such provisions as the following: Biennial sessions of the Legislatures have been substituted for annual meetings in twenty-five constitutions, including all the later ones. The length of the sessions has been shortened in half of the States, sometimes by pre-

scribing an absolute limit, sometimes by curtailing the pay of members after a certain time, running in different States from 40 to 90 days; and experience shows that their zeal to serve their country as legislators dies out with their pay. Special legislation is forbidden by stringent provisions in many States. In special sessions, the Legislatures of many States are forbidden to consider subjects not mentioned in the call for the session, and special sessions are in ten constitutions limited in length, varying from fifteen to forty days.

To prevent hasty legislation, some States forbid the introduction of any new bill (unless, perhaps, by a two-thirds vote of each house) after a certain period has elapsed from the beginning of the session, which period ranges in different places from 25 to 60 days. In other cases, new bills cannot be introduced within a certain number of days of the period set for the adjournment. Some constitutions provide that all bills and amendments must be printed and published before they can be considered by either house. All must be read three times in each house, usually on different days. In nineteen States, no bill can be passed except by a majority of the members elected to each house, and the yeas and nays must be recorded on the final passage of every bill. Twenty-three States provide that no Act shall be revised or amended by mere reference to its title, but the Act revised or section amended shall be set forth and published at full length. And, as already stated, where the Governor holds the veto power, he may usually have a certain number of days to consider the bill, even if the Legislature should adjourn in the meantime.

Perhaps the most fruitful source of vicious legislation is found in "log-rolling,"—that is, combining two or more subjects in one bill,—or in "riders" upon appropriation bills,—that is, in grafting general or special legislation upon some bill containing the general appropriations for the support of the government,—or in combining appropriations for special purposes with the general appropriations,—or in hurrying

through some vicious measure under a specious or false title. All these, except the last, are direct assaults upon the independence of the Executive, compelling him to give his assent to objectionable measures, or, in vetoing them, to veto measures of public necessity. The question of "riders" upon appropriation bills will be more fully considered in connection with the Federal Government. To prevent these evils has been the object of many constitutional provisions, and the practice has been broken up in most of the States by clauses providing that no bill shall contain more than one subject, which shall be clearly expressed in the title, or forbidding the insertion of private appropriations in the general appropriation bills; while in fourteen States, as already remarked, the Governor has power to veto any single item in an appropriation bill.

Besides all the checks on unwholesome legislation which I have mentioned, there are many others much in vogue with modern constitution-makers, such as the following: It is quite customary to forbid the incurring of any indebtedness by the State; to forbid any loan of its credit; to forbid any increase or diminution of the pay of members of the Legislature during their term of office (the same provision is common regarding other officers of the State); no money shall be drawn from the treasury except by appropriation bills; legislators shall not be appointed to any office created by them; the order of the payment of the appropriations is often prescribed; no continuing appropriation shall be made for over two years; no extra compensation shall be allowed to officers during their term of office; no term of office of any individual shall be extended; no legislator shall be interested in any contract with the State; no person holding any lucrative office under the State or United States shall sit in the Legislature; no bill shall be amended so as to change its purpose; no money shall be given from the State treasury to any institution of a sectarian character; no special privileges shall be granted to any corporation; and lastly, the Judges of the

Supreme Court are sometimes associated with the upper house in the trial of impeachments. All these provisions and other similar ones much in use, are checks upon the power of the Legislature, and would have been thought strange and unnatural restrictions a hundred years ago. Indeed, this desire to control and limit the government is shown throughout the general character of these new constitutions. It extends in some respects, though in a limited degree, to the powers of the Executive and Judiciary, and it forms a striking contrast to the generous confidence which the people placed in their officers a century ago, and the liberal powers entrusted to them. The early instruments were usually very short, being often simply a bill of rights, followed by a mere skeleton of the government. Those of to-day are lengthy documents, full of detail, frequently more like a code of laws than a fundamental instrument. The officers of the State are limited and cramped in their action in every direction. Two of the most remarkable for their length are the constitutions adopted by Maryland in 1867, and by California in 1879.

The Southern Confederacy.

The Constitution framed by the Southern Confederacy in 1861, gives a curious evidence of this change in the ideas of our people regarding the relations of the Executive and Legislative branches of government. It follows very closely the Constitution of the United States, but with the following differences, among others: The heads of the departments have seats on the floor of each House of Congress. The President may veto items in an appropriation bill. Congress shall appropriate no money except by a two-thirds vote of both houses, taken by yeas and nays, unless the appropriation is asked for by the head of some department of the government, or is to pay its own expenses or some judicial award against the government. No bill shall comprise more than one subject, and that shall be fully expressed in its title. The

term of office of the Executive shall be six years, and he shall not be re-eligible. The heads of departments may be removed by the President; other officers are removable only for good cause, to be expressed in a report to Congress.

Thus we see that in the State Constitutions there has been a steady drift of popular opinion towards limiting the powers of the Legislature, and, as a rule, towards increasing those of the Executive. This has arisen partly from the need of a better balance between the departments, and partly from a wish to check crude and unwholesome legislation. It is observable, that on the whole this drift is strongest in the newer communities, while the older States, especially those whose people are better educated, and where a more active public spirit prevails, have made fewer changes.

IV.

THE FEDERAL GOVERNMENT.

Without further discussing the State Governments let us pass at once to the Federal Constitution. Nothing can be more instructive than to pause a moment at the threshold and trace some of the hesitating steps by which the fathers reached this admirable form of government, and in the beginning let me acknowledge my debt to Bancroft's History of the Constitution, which has been my sure guide. The Confederation, that "rope of sand," was rapidly crumbling away. It was at best a Congress only, without Executive or Judiciary, hardly more than a league of independent States against Great Britain. Its feeble vitality ended when the pressure of war was removed. The memory of the galling exactions of King and Parliament had made the States afraid to trust even the servants of their own choosing, and the impotent Congress became the laughing stock of the nations of Europe. "America," in the words of her great historian, "carried with her in her progress the urn which held the

ashes of the dead past, but she had also hope and creative power."

The wise men of the day met at Philadelphia in 1787, to devise a plan for a more stable government. We can consider only those features of the convention which related to the balance of powers within the proposed government. The question met them on the threshold, how should the Executive be chosen and of how many should it consist? Virginia proposed that it should be chosen by Congress, leaving the number undetermined. New Jersey preferred a plural Executive, to be chosen and removable by Congress. Williamson of North Carolina proposed a triple Executive, to be chosen from the Northern, Middle and Southern States. Hamilton wanted a single President, chosen by electors, to hold during good behavior; others preferred a direct choice by the people. At last, after weary discussions, the convention voted—seven States to three—that the Executive power should be in one man, and afterwards determined that he should be chosen by Congress. A little later they reconsidered the mode of election, and declared in favor of an electoral system something like the present one; then they placed the choice again in the hands of Congress, and at last they settled down as a finality upon the present system. See how narrowly we escaped having the President chosen by Congress; and yet Madison said in the convention it was so essential to keep the three departments independent of each other, he thought "a tenure of good behavior for the Executive a less evil than its dependence on the National Legislature for re-election," and others spoke in the same vein.

A strong effort was made to engraft on the Constitution a Privy Council, which should be chosen by Congress and should share to some extent the duties and responsibilities of the Executive, especially relating to the confirmation of appointments and ratification of treaties. This effort to limit the power of the President failed to pass the convention, and its failure

compelled the substitution of the Senate in the performance of some of its functions; thus at the last moment the convention invested the Senate with the power to confirm appointments and ratify treaties made by the Executive. "Wilson of Pennsylvania was most apprehensive that the Legislature, by swallowing up all the other powers, would lead to a dissolution of the government; no adequate self-defensive power having been granted either to the Executive or Judicial departments." He foreshadowed the power of the Senate in these prophetic words: "The President will not be the man of the people, but the minion of the Senate. He cannot even appoint a tide-waiter without it." Wilson's fear was well founded, so far as the appointments were concerned; but it certainly would not have been prudent to leave this tremendous power uncontrolled in the hands of one man.

The Opposition to a Strong Judiciary.

This sketch of the sentiments of the convention regarding the relative powers to be entrusted to the various departments would not be complete without a brief notice of their action concerning the Judiciary. A strong opposition was manifested to entrusting the Federal Judiciary with those ample powers necessary for a stable government. It came from two sources. The Confederation had had no Judiciary; and the friends of the State governments were very unwilling to give the Federal Courts power to declare a State statute in conflict with the Federal Constitution; while the advocates of legislative power maintained that it was dangerous to allow the Judges to over-ride a statute enacted by Congress. It was said by Mercer, of Maryland: "I disapprove the doctrine that the Judges, as expositors of the Constitution, have authority to declare a law void. Laws ought to be well and cautiously made, and then be uncontrollable." This would have been virtually giving Congress the sovereign control possessed by the English Parliament, and illustrates well how

little some of these men yet understood the full meaning of the new American doctrine of an instrument controlling and limiting the very government established under it. Fortunately there were wiser men, who thought with Hamilton: "The Courts of Justice should be the bulwarks of a limited constitution against legislative encroachments." The good sense of the Convention brushed aside these jealousies and gave the Judiciary the ample powers it now possesses. Of the growth of these powers by judicial construction I will speak presently. Another influence, supported by such men as Madison, Wilson and Morris, would have combined the Judges of the Supreme Court with the President in the exercise of the veto power, after the model of the Council of Revision in New York, unmindful of the danger of mingling the powers of the different departments. This, too, was happily overruled in the convention.

I have sketched these discussions in the convention to show the difficulties that surrounded the framers of the Constitution, even on points that seem to us perfectly clear. But the wisdom drawn from ten years' experience with the Revolutionary State Constitutions and the Confederation, shed a flood of light on their work. The structure they raised, that model of balanced powers, has outlived a century of political convulsions, and yet stands alone in its just proportions and harmonious outline. "As the British Constitution," said Gladstone, "is the most subtile organism which has proceeded from progressive history, so the American Constitution is the most wonderful work ever struck off at a given time by the brain and purpose of man." Be it remembered to the honor of the Southern States, that they were a majority in the convention.

Balance of Powers in Federal Government.

Notice the care with which the powers of the different branches are balanced and guarded in this wonderful instru-

ment. First, the power of Congress is limited, by its division into two houses. Of this division Judge Story says: "It is of vital importance to interpose some check against the undue exercise of the legislative power which in every government is the predominating and almost irresistible power. . . . A second branch of the Legislative Assembly doubles the security to the people by requiring the concurrence of two distinct bodies in schemes of usurpation and perfidy." This principle is carried into the impeachment of the Executive; after the model of the British Parliament, he must be impeached by the lower, but tried by the upper house. Improper legislation on the part of Congress can be checked by the veto of the Executive, but this again can be overruled by two-thirds of each house; of which Judge Story remarks: "There is a natural tendency in the Legislative Department to intrude upon the rights and absorb the powers of the other departments of government. A mere parchment delineation of the boundaries of each is wholly insufficient for the protection of the weaker branch, as the Executive unquestionably is, and hence there arises a constitutional necessity of arming it with powers for its own defense. If the Executive did not possess this qualified negative he would be gradually stripped of all his authority, and become what it is well known the Governors of some States are, a mere pageant and shadow of magistracy."

Another provision to secure the independence of the Executive is that forbidding an increase or diminution of the President's salary during the term for which he is elected; while the Judges of the Supreme Court are protected by a similar provision forbidding the diminution of their salaries. In case of removal, death, resignation or inability of the President, a Vice-President chosen by the people assumes the Executive power, and not until a similar disaster befalls the Vice-President has Congress any power to designate a successor. No Senator or Representative shall be appointed a Presidential Elector. No person holding any office under

the United States shall be a member of either house during his continuance in office. Under this clause no member of either house can be a Cabinet officer while holding his seat in Congress. On the other hand the rights of Congress are as carefully guarded from invasion by the executive. The control of the public purse is confined exclusively to them. "No money shall be drawn from the Treasury but in consequence of appropriations made by law."

The President has no power to absolve or adjourn Congress, except in case of disagreement between the two Houses. Under the Colonial Governments it had been held a great greivance, so great as to be mentioned in the Declaration of Independence, that the King had repeatedly dissolved the Colonial Legislatures and refused to re-assemble them, thus depriving the people of representation. The Constitution provides that "the Congress shall assemble at least once every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day." The value to Congress of this independence was shown during Johnson's administration, when Congress, being at war with the President, remained continuously in session for two years, with occasional recesses of one to four months. The appointing of all leading officers is vested in the President, with the consent of the Senate. The appointment of inferior officers may by law be vested in the President, the Courts of Law, or the Heads of the Departments. The confirmation of the leading officers by the Senate is the only power Congress has over appointments.

Such great care was taken to separate the functions of the President and Congress. But though the Executive was intrenched behind much stronger powers than those granted by the early State Constitutions, it has been unable to prevent some encroachments by the Legislature upon its functions. In the above enumeration I have not mentioned the awkward provision for the election of a President by the House voting by States, where no candidate has a majority of the

Electors, because it only provides for a rare emergency, and is not likely to exercise any permanent influence on the relations of the two departments; moreover the House can only choose from the three highest candidates already voted for by the Electors. The authority assumed of late years by Congress to canvass the Electoral vote is a far more dangerous power.

Encroachments of Congress.

Smyth, in his Lectures on Modern History, written in 1811, from an English standpoint, says: "If there results to America a grand calamity and failure of the whole, it can only accrue from the friends of liberty not venturing to render the Executive power sufficiently effective—the common mistake of all popular governments." Wherever the limits of the President's power and that of Congress overlapped one another, Congress has usually tried to occupy the debateable ground. I shall notice but three points of conflict; first, the treaty-making power; second, coercive legislation, or, to use the ordinary term, "political riders" on appropriation bills, and third, the power of appointing and removing officers.

The treaty-making power is vested by the Constitution in the President and the Senate, in these terms, "He [the President] shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur." In the face of this provision, Congress has assumed the power by the form of an ordinary statute to abrogate treaties, as was done in 1798, when our treaty relations with France were terminated by statute, and to abrogate portions of treaties so far as they relate to internal domestic matters. This action was sustained by Judge Curtis, in *Taylor* v. *Morton*, 2 Curtis, 454, which established this point, that an Act of Congress may supersede a prior treaty, so far as it is a municipal law, provided the subject matter is within the legislative power of Congress.

This position has been repeatedly sustained by the Courts. But further, the House of Representatives claims the right to pass upon all treaties affecting the revenue, by virtue of that clause in the Constitution giving the House the right to originate all bills for raising revenue. In acknowledgment of this claim the terms of the Hawaiian Reciprocity Treaty provided that it should not go into effect until the passage of an Act by Congress to carry it into effect. The Act was passed and approved August 15, 1876, and the convention proclaimed September 9.

Political Riders.

The expedient of "tacking," as it is called in England—that is, of legislating on appropriation bills—first appeared in the American Congress about 1846. Nine years later, in 1855, it was first tried as a means of compelling legislation. There was a difference between the Senate and the House, on the tariff question; the house put a tariff clause on the Civil and Diplomatic Appropriation bill. The Senate promptly protested against it as improper legislation and rejected it, in which the House concurred, and the bill was passed without the rider. In 1856 a similar attempt was made and met the same fate. So far, it will be observed, the "political rider" only appeared as a weapon in a contest between the two Houses of Congress. From 1865 to 1869 took place the great struggle between Congress and President Johnson. During this, in 1867, the famous bill, virtually depriving the President of the command of the army, and placing its management in the hands of General Grant, was passed as a rider upon the Army Appropriation bill. Johnson protested, but signed the bill; a veto would have been useless, as his opponents had over two-thirds of both Houses, and would have passed the bill over his veto. From this time forward the practice of legislating on appropriation bills became more and more common, mainly as a matter of convenience. The num-

ber of bills introduced into Congress is so large, sometimes reaching 8,000 or 10,000, that it is almost impossible to obtain a hearing for any measure. But the appropriation bills *must* be passed, and it has become very common to place on them provisions enacting necessary laws which otherwise could not be reached on the calendar. Judge Reagan, of Texas, said, in the House of Representatives, that between 1862 and 1875, 387 measures of general legislation had been passed as provisos upon appropriation bills. Ten years ago the practice had become so objectionable that General Grant, in his Message, December 1, 1873, advised an amendment of the Constitution which would prevent it, and this recommendation was recently renewed by President Arthur, in his Message of December 5, 1882. The House of Representatives also recognized the faulty nature of the practice, and amended its rules so as to forbid legislation on appropriation bills, except when it is germane to the subject of the bill and in the interest of economy.

President Hayes and Congress.

The practice continued, however, in a modified form, and when in the 46th Congress the dominant party in both houses wanted to compel the assent of President Hayes to certain political legislation, they had recourse to this expedient and tacked the obnoxious measures upon the bills appropriating money for the support of the army and for the payment of United States Marshals. A struggle ensued between the two parties in Congress, lasting three months, which will be famous in history as defining one of the great landmarks of the government. The bills at last passed both Houses with the riders, and were vetoed by President Hayes. After seven successive vetoes, five of which were upon appropriation bills with riders attached, and two upon the riders detached from the appropriations, the two Houses gave up the struggle and passed the bills without the riders.

The veto message of April 30, 1879, on the Army Bill, discusses the question at length. I quote a few passages from it: "The practice of tacking to appropriation bills measures not pertinent to such bills, did not prevail until more than forty years after the adoption of the Constitution. It has become a common practice. All parties when in power have adopted it. Many abuses and great waste of public money have in this way crept into appropriation bills. The public opinion of the country is against it. The States which have recently adopted constitutions have generally provided a remedy for the evil by enacting that no law shall contain more than one subject, which shall be plainly expressed in its title. The constitutions of more than half the States contain substantially this provision." . . . "The principle [maintained by Congress] is that the House of Representatives has the sole right to originate bills for raising revenue, and therefore has the right to withhold appropriations upon which the existence of the government may depend, unless the Senate and the President shall give their assent to any legislation which the House may see fit to attach to appropriation bills. To establish this principle is to make a radical, dangerous and unconstitutional change in the character of our institutions." . . . "The new doctrine, if maintained, will result in a consolidation of unchecked and despotic power in the House of Representatives. A bare majority of the House will become the Government. The Executive will no longer be what the framers of the Constitution intended, an equal and independent branch of the Government." . . . "The House alone will be the judge of what constitutes a grievance and also of the means and measure of redress." . . . "Believing this bill is a dangerous violation of the spirit and meaning of the Constitution, I am compelled to return it to the House in which it originated without my approval."

There was a vast difference between the position of President Hayes and that of President Johnson. In 1867 the dominant party in Congress had the requisite strength to pass

the bill over a veto; while in 1879 they had only a bare majority in each House, and could only control the Executive, to refuse the supplies necessary for the maintainance of the Government, or, as it was tersely put by General Garfield, they threatened to "starve the Government," unless their demands were complied with. It was an entirely new line of attack upon the Executive, and having met with absolute defeat, it is not likely to be renewed by either political party in our day.

Appointment and Removal of Officers.

But the most direct assault on the power of the President is the Senate's encroachment on his power of appointment and removal. The terms of the appointing power are distinctly stated in the Constitution, but nothing is said of removals. The question came up in 1789, under Washington's administration, whether Cabinet officers appointed by the President with the consent of the Senate could be removed by the President alone, or whether their removal should require the consent of the Senate. Congress, influenced perhaps by the exalted character of Washington, passed the bill allowing the President the power of removal in these cases. This action was opposed by many of the wisest men of that day; a powerful minority resisted it in the House, and it passed the Senate only by the casting vote of the Vice-President. Of course it carried with it the acknowledgment of the principle, that the power of removing officers lay in the Executive, though I do not suppose that any man then imagined the terrible abuse which would, inside of half a century, follow the use of that power. The action of Congress in this matter is spoken of by Story as "the most extraordinary case in the history of the government, of a power conferred by implication on the Executive by the assent of a bare majority of Congress, which has not been questioned on many other occasions." Very soon, however,

after the publication of this opinion, this "legislative construction," as it was called, of a constitutional provision, became the subject of a very spirited debate in Congress during Jackson's first term of office. Story's Commentaries on the Constitution contain an interesting discussion of the original debate in Congress in 1789, while a careful review of the President's side of the question may be found in Johnson's Message, March 2, 1867, vetoing the Tenure of Office Act.

To the Victors Belong the Spoils.

No marked result followed from this policy adopted in 1789, till Jackson became President in 1829, when, as is well known, a general removal of civil officers took place for the first time. This created a great outcry and much bitter feeling. A very able debate on the President's course took place in the Senate, in which the Whigs censured him for exceeding his rightful powers; no further action, however, ensued, as the House of Representatives was friendly to Jackson. But from this time forward a change came over the policy of the Government in these matters. "To the victors belong the spoils," was recognized as the governing motive of each party when in power. Each President in turn, on taking his seat, removed his enemies from public office and appointed his friends. At last there came a time in 1867, when the opposition to the President was strong enough in Congress to control his policy, and over-ride his vetoes, for the first time in the history of the country; and under Johnson, the Tenure of Office Act was passed, which reversed the precedent, and forbade the displacement of an officer appointed with the consent of the Senate, unless removed by a similar formality. President Johnson vetoed the bill, but it was passed over his head, and, in a modified form, it is the law to-day. On the accession of General Grant to the Presidency, the law was amended, but the

Senate have never parted with the power. Thus the power of removal, without the consent of the Senate, was taken from the Executive.

But great as this loss was to the President, he has sustained a still greater one in the virtual deprival of the power of appointment. Already in the days of Jackson, the party leaders in the Senate began to claim the appointment of their supporters to public office, and this practice was steadily gaining ground with each Administration. The contest with President Johnson expanded the power and the ambition of the Senate still more, and the Senators now demanded, as the price of their support of the Administration, that the more important Federal appointments in their respective States should be made from their adherents. The Executive was obliged to yield—even Grant could not resist—and so the modern "boss" was established. To-day the Senatorial "boss" controls the large majority of Presidential appointments, in unquestionable violation of the intent of the Constitution.

There is a curious trifle in the matter of social etiquette at Washington, which marks the rising tide of Senatorial dignity at the time we have been speaking of. In Washington society, as is well known, social precedence follows strictly the order of political rank; before Johnson's time the Cabinet officers out-ranked the Senators; but, under Grant, the Senatorial dignity claimed a place at the dinner table above the Secretary, and the claim was recognized. This seems laughable, but the demand was backed by real power.

This vicious and unconstitutional practice of dictating Executive appointments has grown until now the "courtesy of the Senate," so called, that is, the tacit agreement with each other to divide the spoils, often over-rides all considerations of individual fitness or of public interest. The climax was reached when two United States Senators resigned their seats because they could not have their share of the patronage. The world moves on and there is a high-water-mark

for every iniquity. The Dred Scott case marked the full swell of the tide of the power of slavery; the veto of the Army bill in 1879 sounded the decline of "political riders." The resignation of the New York Senators was the dawn of a new era without "bosses." It brings the hope of something better than a restoration of the power of removal to the Executive. We want no more Jacksons; the concentration of all this power in one man would be more dangerous than in a Senate of 76 members; but we look forward for that better time when there shall be no appointments except for fitness, and no removal but for just cause.

Jackson's Extraordinary Claims.

In reviewing the political history of the country, we find that while Congress and the Executive have often been at variance, they have three times openly joined battle on the extent of their prerogatives. The first fight was between Jackson and the Whigs in 1834, the second between Johnson and the Republicans in 1867, and the third between Hayes and the Democrats in 1879. I have already referred to Jackson's wholesale decapitation of the Federal officials, upon his accession to the Presidency, and the indignation expressed by his opponents at this new departure in political warfare. Towards the end of his first term, he became involved in a war with the United States Bank, and vetoed the bill extending its charter, alleging among other objections, that the charter was unconstitutional, although the Supreme Court had sustained the original Act. In his veto message occurs this remarkable passage: "If the opinion of the Supreme Court covered the whole ground of this Act, it ought not to control the co-ordinate authorities of this Government. The Congress, the Executive, and the Court, must each for itself, be guided by its own opinion of the Constitution. Each public officer who takes an oath to support the Constitution, swears that he will support it as he understands it, and not as it is understood by

others. It is as much the duty of the House of Representatives, of the Senate, and of the President, to decide upon the constitutionality of any bill or resolution which may be presented to them for passage or approval, as it is of the Supreme Judges, when it may be brought before them for judicial decision. The opinion of the Judges has no more authority over Congress than the opinion of Congress has over the Judges, and on that point the President is independent of both. The authority of the Supreme Court must not; therefore, be permitted to control Congress or the Executive, when acting in their legislative capacities, but to have only such influence as the force of their reasoning may deserve."

Jackson was an exceedingly positive, self-willed, arbitrary man, of remarkable tenacity of purpose. He was dear to the people as the hero of New Orleans, and was universally respected as a man of sturdy honesty, integrity of purpose and inflexible patriotism. His fight with the bank increased his popularity, for it made him the champion of the poor as against the rich, of the laboring classes as against the moneyed interests, and shortly after the veto he was re-elected President. Jackson's re-election should not be regarded as a verdict by the people in favor of the spoils system, or of his despotic assumption of power, but as an expression of their love for him as a soldier, and their prejudice against what they conceived to be the moneyed rule as represented by the Whigs. Emboldened by his re-election, he determined to remove the Government deposits from the United States Bank, although Congress had declared in favor of their retention there. Duane, the Secretary of the Treasury, refused to do it. Jackson removed him and appointed Taney, afterwards Chief Justice of the Supreme Court, as his successor, and Taney removed the deposits in September, 1833. When the new Congress met in December, the House was favorable to Jackson, but the Senate resolved March 28, 1834, that "the President, in the late proceedings in relation to the public revenue, has assumed upon himself authority

and power not conferred by the Constitution and laws, but in derogation of both."

Jackson replied by the famous "Protest," which he demanded should be entered on the journal of the Senate. He justified his removal of the Secretary of the Treasury by the bold claim that "the power of removal, which, like that of appointment, is an original executive power, is left unchecked by the Constitution, in relation to all Executive officers for whose conduct the President is responsible;" as though, instead of his being invested only with granted powers, there were original Executive powers, part of which only had been removed by the Constitution, while the rest remained. In another part of the Protest, he declared "the President is the direct representative of the American people, elected by the people and responsible to them," while "the Senate is a body not directly amenable to the people," thus assuming a kind of patriarchal duty to stand between the Senate and the people. The Senate passed a second series of resolutions, to the effect that the Protest "ascribed powers to the President irreconcilable with the authority of the two Houses of Congress and with the Constitution," and they refused to enter the Protest on their journal, and here the matter ended for a while. The House being friendly to Jackson, the Senate could do no more. In the next Congress, however, Jackson's friends controlled the Senate and expunged the obnoxious resolution of March 28, 1834, from the Senate journal. When I was a child, the memory of this expunging resolution was fresh, and I well remember the indignation of the Whigs at what they called a mutilation of the records. The student of political history will find a masterly statement of the position of Jackson's opponents in Webster's speeches on the Veto of the Bank Bill, the Removal of the Deposits, the President's Protest and the Expunging Resolution. No President after Jackson ever dared to take the stand he had occupied as to the relative functions of Congress and the President.

His claim of original Executive power, his assumption of a peculiarly close relation to the people empowering him to

stand between them and the Senate as the champion of popular rights, and his declaration of his right to be the judge of the constitutionality of laws, would, if allowed, have made him little less than dictator. Von Holst quotes Story as saying of Jackson: "I confess that I feel humiliated at the truth, which cannot be disguised, that though we live under the form of a republic we are in fact under the rule of a single man." Jackson's unbounded popularity sustained him in these arbitrary measures. The people admired him for his military glory, the masses looked up to him as their champion against the rich, all patriots respected him for the stand he took against nullification, while even his enemies gave him the credit of positive convictions and fearlessness in carrying them out. Fortunately for the country he had no successor able to wear his mantle. Congress resumed its accustomed functions, and throughout the Presidency of Van Buren, was in fairly harmonious relations with the Executive.

But in Tyler's administration, the President was once more in open conflict with both Houses of Congress, a conflict embittered by the fact that he had been elected Vice-President by the dominant party. Twice he vetoed the bill re-establishing the United States Bank, and twice he vetoed the Tariff Bill, on which had been tacked a bill for the distribution of the proceeds of the public lands. By this time the indignation of the Whigs was thoroughly aroused; the committee of the House, to which the veto had been referred, with John Quincy Adams at its head, denounced this wholesale exercise of the veto power as tyrannical, and declared they would impeach the President, were there any prospect of his conviction; and Henry Clay introduced a proposition to amend the Constitution so that a majority vote in both Houses of Congress would over-ride a veto. This proposition received a majority of the votes of the House, but not the necessary two-thirds. The President replied to these violent attacks by a Protest, much in the spirit of Jackson's; and here the matter ended, as the Whigs had only a bare majority in each House, and could follow it no farther.

Congress and Andrew Johnson.

There was no open breach after this between the President and Congress till 1866 and 1867. Johnson, who was as positive as General Jackson, but without his support, either in Congress or by the people, had resolved upon a plan of restoring the rebellious States to the Union. The Republican leaders disapproved of the President's measures, and having control of both Houses, by over two-thirds of each, they resolved upon a policy of their own. In pursuance of this policy Congress passed the following four bills, of vital importance in the matter of reconstruction: The Civil Rights Bill, conferring Federal citizenship on all persons born in the United States, and ensuring them full and equal benefit of all laws; the Reconstruction Bill, reversing the President's policy and defining the terms and methods under which the States lately in rebellion could resume their places in the Government; the Civil Tenure Act, stripping him of the power of removing civil officers without the consent of the Senate; and the Electoral College Bill, defining what votes should be counted for President. All these Johnson promptly vetoed, and they were immediately passed over his veto. Congress also added to the Army Appropriation Bill a provision, which virtually deprived him of the use of the army in aid of his policy of reconstruction, and disbanded the militia of the rebellious States. The President protested against this provision, but signed the bill. Thus Congress rejected the President's plan for the restoration of the Southern States to the Union, and adopted one of their own, while at the same time they stripped him of the power to thwart their policy.

The contest ended in the impeachment of the President, which failed of success by a vote of 35 to 19; one vote more would have deprived him of his seat. It is the most dramatic scene in the history of our country, this mighty struggle for mastery between these two grand powers of the Government. I am not concerned here with the right or the policy of these

measures, but simply rehearse them to show the tremendous power of Congress, and the feebleness of the Executive making war upon it. Congress has absolute control of the Treasury, and when the dominant party numbers two-thirds of each House it holds the absolute power of legislation, within the Constitution, and the power of impeachment. Johnson appealed to Jackson's policy, but was powerless to follow his example.

The third battle, that between Hayes and the Democrats, has been related in sufficient detail already. Thus I have sketched the leading features of encroachment, whether by President or Congress upon its co-ordinate power, since 1789. Jackson's protest in 1834 was the climax of Presidential claims. Johnson's impeachment marks the summit of self-assertion by Congress. Since the accession of Grant, the political pendulum has been slowly swinging towards a limitation of the relative power of Congress. Hayes' victory over the political riders, and the steadfast refusal of both Hayes and Garfield to listen to the dictation of Senatorial leaders, are marked features of the last six years. Two bills recently before Congress emphasize this tendency. One, which has become the law of the land, is the Civil Service Reform Bill, which is really a bill to limit the patronage of Senators; the other is the proposition to change the order of succession, substituting after the Vice-President, the members of the Cabinet, in place of the President of the Senate and the Speaker of the House.

The Veto Power.

The use of the veto power demands a brief notice here, for an impression prevails that it is becoming more common in these latter days. This is not true relatively, when we consider the enormous increase of legislation by Congress. I have been at considerable pains to gather, not only all the vetoes, but as far as possible all the bills retained by the Presidents,

after the adjournment of Congress, or to use the common phrase, "pocketed." My list may not be absolutely complete, but is very nearly so. I find from Washington to Arthur, inclusive, seventy-seven vetoes of both kinds. Forty-three of these emanated from four Presidents, viz: Jackon, eleven, Tyler, ten, Johnson, thirteen, Hayes, nine. All these administrations were periods of fierce conflict with a hostile Congress. Add Madison, six, Pierce, five, Buchanan, seven, and Grant, six, and we have sixty-seven out of seventy-seven vetoes; and only ten remain to the other twelve Presidents, covering ten full and four fractional terms.

Dividing the administrations into four consecutive periods, we have this result: From Washington to John Quincy Adams inclusive, a period of forty years, there were nine vetoes; from Jackson to Tyler, in sixteen years, there were twenty-one vetoes; from Polk to Lincoln, twenty years, eight vetoes; from Johnson to Hayes, again sixteen years, twenty-eight vetoes. Five subjects comprise the majority of all the vetoes: Internal Improvements, seventeen; United States Bank, four; Reconstruction Acts, seven; Rebel Claims, four; Interference at Elections by marshals and soldiers, seven, in all thirty-nine out of seventy-seven. Ten bills have been passed over vetoes, one under Tyler, seven under Johnson, one under Hayes, and one under Arthur.

Fierce attacks have been made from time to time in Congress upon the veto power, charging the Presidents with despotic use of it, and claiming that the intention of the founders of the Government was to limit its use to hasty or unconstitutional legislation; but the Constitution itself makes no such limitation, nor does the early practice under it; the second veto of Washington being based solely on expediency and the maintenance of the public faith. The veto power may be dangerous, as all power is in the hands of bad men, but this review does not justify the common impression of its growing abuse. It comes into prominence when the President is brought face to face with a hostile Congress, eager to

cross swords with him, but when the two great powers are on friendly terms, as is usually the case, the knowledge of its hidden power acts only as a check upon crude legislation.

Our examination has thus far shown that the disposition of Legislatures is aggressive. Every popular body tries to overstep the bounds of its lawful power, from the American Congress down to the County Committee. The Revolutionary fathers recoiling from the tyranny of royal Governors gave too much scope to legislative authority. We have been steadily hemming in that authority in our State Constitutions for a century, and expanding the powers of our Governors.

The Federal Constitution, fortunately framed later, in the light of ten years' experience, was much better balanced. But a different principle comes in here. Cooley thus defines the distinction: "It is to be borne in mind that there is a broad distinction between the Constitution of the United States and the Constitutions of the States, as regards the powers which may be exercised under them. The Government of the United States is one of enumerated powers; the Governments of the States are possessed of all the general powers of legislation. When a law of Congress is assailed as void, we look in the National Constitution to see if the grant of specified powers is broad enough to embrace it; but when a State law is attacked on the same ground, it is presumably valid in any case, and this presumption is a conclusive one, unless in the Constitution of the United States or of the State, we are able to discover that it is prohibited. We look in the Constitution of the United States for grants of legislative power, but in the Constitution of the State to ascertain if any limitations have been imposed upon the complete power with which the legislative department of the State was vested in its creation. Congress can pass no laws but such as the Constitution authorizes, either expressly or by clear implication; while the State Legislature has jurisdiction of all subjects on which its legislation is not prohibited. 'The law-making power of the State' it is said

in one case, 'recognizes no restraints and is bound by none, except such as are imposed by the Constitution. That instrument has been aptly termed a legislative act by the people themselves in their sovereign capacity, and is therefore the paramount law. Its object is not to grant legislative power, but to confine and restrain it. Without the constitutional limitations, the power to make laws would be absolute.'"

This clear distinction suggests to us that the State Legislatures, inheriting the paramount power of the people, need stricter limitations than the Federal Congress, which acts only by virtue of granted powers. On the other hand, the State Executive can be safely trusted with much broader powers than the President, because he is only a local officer; his term is generally shorter than the President's; he is more directly responsible to the people, and if his powers are found by experience to be too full, it is comparatively easy to amend the Constitution, from which he derives them. His administration may be corrupt or inefficient, but would never be fatal to the liberties of the people, for he is restrained by the Constitution of the United States, which guarantees republican government and the equality of all men before the law. But the President of the United States, controlling the military power of the country, and backed by an army of 100,000 civil officers, wields a power which menaces the liberties of the people, unless controlled by a faithful Judiciary, and, above all, by a watchful Congress. His influence is not to be measured by the boundaries of the Federal power as expressed in the Constitution. His army of civil officers often gives him almost absolute control of State politics. He may enter a State, and control its political action, manage its conventions and dictate its local nominations, as we have too often seen done. His power is tremendous, and our safety lies in the shortness of his term and the jealousy and watchfulness of Congress.

Government by parties, which has become the form of our political life, has, however, brought one dangerous

feature of legislative encroachment, the right claimed by Congress to determine the validity of the electoral vote of any State in a Presidential election. We have had one narrow escape from civil war through this source. Such a contingency may never arise again, but so great a peril must be guarded against. If Congress can by this means make a President, the system so carefully devised to maintain the independence of the Executive is broken down, and we are drifting upon the shoals so much feared by the fathers of the Constitution. The same spirit which is always ready to unseat a member in a nearly-balanced House of Representatives, for the purpose of increasing the working majority of the party, would not scruple in a closely contested Presidential election to grasp at any technicality to win the grander prize, the control of the Federal Government. These fears may never be realized, but they threaten the most serious invasion of the independence of the Executive ever yet attempted.

If we pass by these dangers as belonging to the future rather than the past, we may conclude as the result of our inquiry into the changes in the Federal Government that there has been no great alteration in the relative powers of Congress and the President since 1789. The bold position assumed by Jackson was abandoned by his successors, and the power of appointment and removal which he wielded with such success, the later Presidents have been compelled to surrender or share with their political supporters in Congress. In this respect and in some others Congress has encroached somewhat upon the powers formerly possessed by the President, but there has been no material change.

V.

THE JUDICIARY.

So far our attention has been mainly occupied with the struggles for power between what may be called the two

great political departments of the State, those who make the laws and those who execute them, and the efforts of the people to curb them both. The relations of each of these powers to the Judiciary, the interpreters of the law, now remain to be considered, and it will be clearly seen that the Courts have increased steadily in power and independence, so far as their relations to the two co-ordinate branches of government are concerned. This steady growth of the authority of the Judiciary is, to my mind, the most remarkable and unique feature in the history of our system of government. Fifty years ago the power of the Courts excited the wonder of De Tocqueville, and the lapse of time since then has only increased the marvel. The change has been silent but steady; being outside the storms of active politics, it has been little observed and little spoken of, but it has certainly transformed the governments within themselves, and to the Federal Union it has furnished the main bulwark of its power. If there be an essential difference between our system and the other popular governments of the world, it lies in the unusual authority given to the Courts. The changes resulting in this increase of judicial authority I will now trace: first considering the method of appointment of the Judges and their tenure of office; and to avoid repetition, wherever the Judges are spoken of, unless otherwise qualified, the word will be understood to mean the highest Court, the Court of last resort, whether of Colony, State or United States.

Referring to what has already been said of the colonies, it will be remembered that they were classed under three forms of government; seven were Royal Provinces, three were Proprietaries and three were Charter Governments. In the Provinces the King named the Governor, and the Governor appointed the Judges. In the Proprietary Governments the proprietors were the feudal representatives of the King, and they or the Governors chosen by them named the Judges. Under the Charters, in Massachusetts the Governor appointed

the Judges, while in Rhode Island and Connecticut they were chosen by the Legislatures. In some of the colonies the Governor's nomination required confirmation by the Council, but as that body was generally named by the Governor, it altered the case but little. The Judges usually held office for life, but in every colony the Crown claimed the right, as a Court of last resort, to receive appeals from the Colonial Courts. It will be readily seen that where the King, or his direct representative, appointed the Judges, and at the same time exercised an appellate jurisdiction over all their decisions, both the power and the independence of the Judges were much circumscribed.

The Revolutionary Constitutions.

In the Constitutions formed during the Revolution for the government of the infant States, the Legislative branch, as already stated, swallowed up the power of the Executive. In pursuance of the same trend of popular policy, the Legislatures in most of the States controlled the appointment of the Judges. In six States, Connecticut, Rhode Island, New Jersey, Virginia, North Carolina and South Carolina, the Legislature appointed the Judges directly; in four States, New Hampshire, Massachusetts, Pennsylvania and Maryland, they were appointed by the Governor, with the consent of the Council; in New York, by the Governor, with the consent of a special council chosen by the Legislature from their own number solely to supervise the appointments of officers; in Delaware, by the Executive and Legislature; but in Georgia they were chosen by popular election, the first instance probably in America of an elective Judiciary. The Judges could everywhere be impeached for misdemeanor by the lower house of the Legislature, and tried by the upper. In addition to this, in five States they could be removed by the Governor, on an address from both branches of the Legislature, a provision retained in many State Constitutions to-day.

Besides this control over the Judiciary, the Legislatures of five States, Rhode Island, Connecticut, New York, New Jersey and South Carolina, exercised distinct judicial functions apart from the usual right of trying impeachments. This practice took different forms in different States, usually the upper house, together with either the Governor or Lieutenant Governor, sat as a Chancery Court or as a Court of Appeals. In Delaware, on the other hand, while the Legislature exercised no judicial functions, the Chief Executive, called the President, was ex officio a member of the Court of Appeals. This confusion of duties has disappeared with a clearer understanding of the bounds of the different departments, and survives nowhere in the United States at present. These early Constitutions provided that the Judges should have adequate salaries, sometimes fixing the amount; two of them providing that their compensation should not be diminished during their term of office, a provision very generally adopted now; but they were left everywhere dependent on a legislative appropriation for their salaries.

In the instruments under review, the Judges usually held office during good behavior; this was certainly so in eight States, New Hampshire, Massachusetts, New York, Delaware, Maryland, Virginia, North Carolina and South Carolina; New York alone retiring them at sixty years of age. In Pennsylvania and New Jersey the term was seven years, while in Georgia the Judges were chosen by the people every year. In Rhode Island and Connecticut, according to Bancroft, they were appointed by the Legislature annually. The Judges were usually forbidden to hold other offices, especially of a legislative character, which is a very common prohibition in modern constitutions.

Modern Constitutions.

The experience of a century under written constitutions has led our people to a constantly clearer perception of the natural

boundaries of the three co-ordinate powers of government and a constantly sharper limitation of their functions, each to its own field. The Legislature has been shorn of its unjust supremacy and confined to its rightful limits; the power of the Executive has been restored to a proper degree, and the judicial powers of the Legislature, except the trial of impeachments, have been placed in the hands of the Judges, where they belong, making the balance of power in the State Constitutions far more perfect to-day than ever before.

At the same time the people by a natural jealousy have taken into their own hands the power of choosing their officers, which before they had delegated to their representatives. The Governors are no longer chosen by the Legislatures, but by the people. The Judges are no longer chosen by the Legislatures nor appointed by the Governors, but in twenty-six States they are elected directly by the people. The twelve exceptions are as follows: In Delaware the Governor appoints; in Massachusetts and New Hampshire the Governor with the consent of the Council; in Florida, Georgia, Mississippi, Louisiana and New Jersey, the Governor with the consent of the Senate; in Connecticut, Rhode Island, South Carolina and Virginia, the Legislature elects. It will be noticed that these are all old States, though in some cases under new Constitutions. The only States retaining the tenure during good behavior are New Hampshire (limited to seventy years of age), Massachusetts, Delaware, Florida and Rhode Island; in the last named State the Judges holding office till the place is declared vacant by a majority of the Legislature. In the remaining thirty-three States the term is fixed, running from two years in Vermont to twenty-one in Pennsylvania, the average term being eight and one-half years, though in New Hampshire, Connecticut and Maryland the tenure of office ceases at seventy years of age. Public opinion seems of late to lean towards longer terms. In Pennsylvania the Judges are not re-eligible, and in Michigan, Ohio, Nevada and California they are not eligible for any except judicial offices during the

term for which they were elected. If the Judiciary ought to be independent of politics, this is certainly a wise provision. It will perhaps surprise the casual reader to learn that in thirty States, the Judges may be removed by the Legislature, or by the Governor on an address from the Legislature, which usually requires two-thirds of each House. This is independent of the right of impeachment which prevails in every State except Oregon.

So much for the methods of appointment and the tenure of office. The tendency is certainly towards placing the Judges on a footing independent of the other departments of the Government, and directly dependent upon the people. Whether an elective Judiciary is an improvement on the old methods of appointment, is a mooted question; but one thing is certain, no inclination is manifested by the people to return to the old-fashioned method of appointment in those States where the Judges are chosen directly by popular vote. There is, however, a decided leaning towards longer terms of office for Judges in the States; and a longer tenure of office with more adequate compensation, would certainly go a long way towards correcting any alleged deterioration in the quality of the elective Judiciary.

The direct relations of the Bench to the Executive will next occupy our attention, and after that the power assumed by American Judges to declare a statute to be in conflict with the Constitution.

Relations of the Judiciary to the Executive.

The power of the Judiciary to control the action of the co-ordinate powers of the Government, especially the Executive, either by mandamus or injunction, involves some of the most delicate and difficult questions in the machinery of our governments. Most of the cases concern its relations to the Executive, and the Courts, with admirable discretion, have tried to steer clear of a collision with the rival authorities.

"In many cases," says Justice Story, "the decisions of the Executive and Legislative Departments become final and conclusive—being from their very nature and character incapable of revision. Thus, in measures exclusively of a political, executive or legislative character, it is plain that as the supreme authority as to these questions belongs to the Executive and Legislative Departments, they cannot be re-examined elsewhere."

As early as 1802, the Federal Courts, in Marbury's case, laid down the rule that "questions in their nature political, or which are by the Constitution and laws submitted to the Executive, can never be made in this Court." Johnston's Political Cyclopædia cites several unsuccessful attempts to involve the President and the Supreme Court in conflicts of authority. In 1807 an effort was made to compel the personal attendance of the President as a witness in Burr's case, but it did not succeed. In 1861 the Chief Justice ordered an attachment to issue against an army officer for disregarding the writ of habeas corpus which had been suspended, but when the attachment was returned unsatisfied, the Chief Justice abandoned all proceedings. In October, 1865, and until martial law had ceased in the South, the Court refused to hold sessions in that section. In 1867 the State of Mississippi applied to the Supreme Court for an injunction forbidding the President to execute the Reconstruction Acts, but the injunction was refused. In this case Chief Justice Chase said: "The Congress is the Legislative Department of the Government; the President is the Executive Department; neither can be restrained in its action by the Judicial Department, though the acts of both when performed are, in proper cases, subject to its cognizance." The "proper cases" are such as are not political in their nature.

But while the Courts will not interfere in cases of a purely political nature, whatever that may mean, they claim the right to compel the performance by the Executive of duties of a purely ministerial character. The position is thus stated by

Chancellor Kent: "The principle settled in Marbury's case was that the official acts of the heads of the Executive Department as organs of the President, which are of a political nature, and rest under the Constitution and laws, in Executive discretion, are not within judicial cognizance. But when duties are imposed upon such heads, affecting the rights of individuals, and which the President cannot lawfully forbid, — as for instance, to record a patent, or furnish a copy of a record,— the person in that case is the officer of the law and amenable thereto in the ordinary course of justice." This power of the Courts to compel the performance of an act merely ministerial in its nature, was denied by President Jefferson, but it has been repeatedly affirmed by the Supreme Court, and acquiesced in as established law. In Kendall's case it was decided by the Supreme Court of the United States that the Circuit Court of the District of Columbia had authority to issue and enforce obedience to a mandamus requiring the performance of a mere ministerial act by the Postmaster General, which neither he nor the President had any authority to deny or control; for the Postmaster General is not subject to the direction and control of the President with respect to the execution of duties imposed on him by law. The President has no dispensing power over the law. And more recently, in *The United States* v. *Schurz*, the Secretary of the Interior was compelled by mandamus to deliver a patent for lands to the relator. There are many other cases in which the same doctrine has been affirmed in the Federal Courts.

With respect to the Executive officers of the States there is a difference of opinion, the Courts being about equally divided. In several of the States a mandamus will lie to compel performance of purely ministerial duties by the Executive, while in others it has been thought to be subversive of the balance between the three great departments.

Interference with the Independence of the Courts.

It might be expected in the violent changes of political complexion constantly occurring in our governments, that the other departments must sometimes be tempted to lay hands upon the Judiciary, and try to mould it to their purposes, but such instances are rare. This is remarkable, for the Courts inevitably reflect to a certain extent the dominant public sentiment in their decisions, as for example, the strong centralizing drift of the Federal Courts in the time of the first Presidents, the Dred Scott decision under Taney, and the Granger cases of 1876. And when that sentiment changes, and Congress and the President find themselves representing a public feeling and a public policy at variance with the Courts, as was the case under Jefferson and his immediate successors, and again under Lincoln, we might reasonably look for some effort to control its action, but the Courts are so strongly intrenched behind their constitutional independence that very few assaults have been made upon them.

In 1801, at the expiration of the Presidential term of Adams, a system of sixteen Federal Circuit Courts was established by Congress, and the Judgeships were filled by men of the Federal party. Great indignation was expressed that these appointments were made at the very close of Adams' term, and the appointees were nicknamed the "Midnight Judges," because it was said that Adams signed their commissions at midnight of his last day in office. Party feeling ran so high that at the next session of Congress, Jefferson being President, the Courts were abolished and the "Midnight Judges" were ousted.

Very shortly after this, in 1804, an effort was made to remove Judge Chase, one of the Associate Justices of the United States Supreme Court, by impeachment, but he was acquitted in the Senate although a majority voted for conviction on some of the charges. The motive of this attack

was political and the vote on the charges divided mainly on party lines.

In 1866, during President Johnson's term, Congress reduced the number of Justices on the Supreme Bench from ten to seven, to prevent his filling the vacancies with his political friends. By the statute of 1863 the Court was composed of a Chief Justice and nine Associate Justices. Justice Catron died in 1865, and Congress passed the singular statute alluded to above, providing that "no vacancy in the office of Associate Justice of the Supreme Court shall be filled by appointment until the number of Associate Justices shall be reduced to six, and thereafter the said Supreme Court shall consist of a Chief Justice and six Associate Justices," etc. Justice Wayne died in July, 1867, and Justice Grier resigned in February, 1869, reducing the Court to the statutory number of seven. Grant was inaugurated President March 4, 1869, and in April of the same year Congress raised the number of Associate Justices to eight, one less than under the statute of 1863, and Bradley and Strong were appointed to the vacancies. These appear to be the only instances in which Congress has interfered with the Federal Courts.

The President, however, has a direct influence on the Bench in his power of appointment to vacancies, which he always fills with men in sympathy with his own political views. In this way the political complexion of the Court is constantly changing. But it should be said that though many appointments have been made of men active in politics, as, for example, Taney and Chase, no stain has ever been cast upon the integrity or honesty of their decisions after being placed upon the Bench. Probably the most remarkable instance of a change in the tone of the Court brought about by new appointments, was regarding the Legal Tender Question. In 1869 the Court held, five to three, that United States notes were not a legal tender for debts existing before the passage of the law of 1862. In 1871 the Court reversed

this decision, by five to four, having in the meantime received two new Judges, Bradley and Strong.

The limits of this paper forbid any extended examination of the relations of the Judiciary in the State Governments to the other departments. In the early years of the republic there was undoubtedly a much greater jealousy on the part of the State Legislatures towards the Courts than exists to-day, and a much stronger inclination to interfere with them on political grounds.

I have only room to mention a few prominent instances. In Pennsylvania, in 1804, after a political revolution at the polls, Judge Addison, President Judge of the Court of Common Pleas for the Western District of the State, was impeached and removed from office by a strict party vote; and an attempt was made to remove from the Bench by impeachment Judges of the Supreme Court of the State, which failed, although a majority of the Senators voted for it.

In 1856, Judge Woodbury Davis of the Supreme Court of Maine was impeached and removed by a party vote, and the office which he held was abolished. A year later, a revolution having taken place in the polities of the State, the office was re-established and Judge Davis was re-appointed. In 1858, the Massachusetts Legislature by address requested the Governor to remove Judge Loring from the Bench on political grounds, but the Governor refused.

Other instances of attacks by the Legislatures of different States upon their Judges for political reasons will be mentioned later when treating of the resistance made by the Legislatures to the claims of the Courts. Such cases have occurred mainly in periods of unusual political excitement and are growing more and more rare. It has already been shown that in nearly every State the Supreme Court has been placed by the Constitution on an independent footing, and apparently there is little disposition at the present time to interfere with the inferior Courts for selfish or political ends.

Great Power of American Courts.

We have seen in the course of this sketch the most radical changes in the relations of the three co-ordinate powers of Government. The Executive, all powerful at the beginning, was reduced to a mere shadow of its former glory, and in these later days is regaining some of its lost power. The Legislature, at first weak, afterwards absorbed the powers of the other departments, but is now much reduced again. Throughout all these changes the dignity and power of the Judges have steadily increased. Their independence has been spoken of, and their claim to control even the conduct of the Executive in purely ministerial acts, but their greatest power, most amazing to Europeans, is the authority to set aside a statute which they hold to be in conflict with the written Constitution. No other Courts in the world possess this unique power. The Supreme Courts of the States may pronounce upon the constitutionality of the statutes of the State Legislature, while the Supreme Court of the United States may sit in judgment upon the laws of Congress, the official acts of the President to a certain extent, upon the statutes of the States, nay, even upon the State Constitutions themselves. "The Supreme Court," said De Tocqueville, "is placed higher than any known tribunal, both by the nature of its rights and the class of justiciable parties which it controls."

This increase of the judicial power in America results first from the steady growth of the idea that the Constitution, the fundamental law of the State, should be an instrument emanating directly from the people, and controlling the acts of the Government instituted under it; next, as the natural corollary of this, it was recognized that the power must lie somewhere to compare the acts of the Executive and Legislature with the Constitution, and it could only lie properly in the Courts.

We are so accustomed to-day to the machinery of a Constitutional Convention, chosen solely to frame a government,

and when it has completed its work, submitting the instrument to ratification by popular vote, that we forget there was a time when these forms were new, a time when the Legislatures claimed these powers, and made and unmade Constitutions. Our Revolutionary fathers were colonial Englishmen before they were Americans, and they inherited the love for English institutions and that reverence for Parliament which clothes it with absolute power. So in the early days of the Revolution, we find our Legislatures claiming the same wide stretch of authority that belonged to the British Parliament. When the Colonies in 1775 and 1776, threw off the yoke of Great Britain, it was in every case an act of the Legislature, and in no instance were the people consulted directly. The new forms of government then adopted, were not submitted to direct ratification by popular vote, except in New Hampshire and Massachusetts. In Rhode Island and Connecticut, the Legislatures simply declared their independence, and re-affirmed the forms of government already existing under their charters. In South Carolina, a Constitution was framed and adopted by the Legislature; while two years later, in 1778, the same body by a mere statute repealed this fundamental instrument and adopted a new one. In Virginia a Convention composed of 45 members of the House of Burgesses framed and adopted a Constitution which stood till 1830. In Delaware, Georgia, Maryland, New Hampshire, New Jersey, New York, North Carolina and Pennsylvania, Conventions elected for the purpose, framed and adopted Constitutions. In Massachusetts alone, the work of the convention was submitted to the people for ratification, which took place in 1780. In Delaware, Georgia, New Hampshire and Pennsylvania, new Constitutions to supersede the temporary instruments first adopted, were framed by Conventions within a few years, but only in New Hampshire was it thought necessary to ratify the work of the Convention by popular vote.

The object of entering thus into detail on this point was to show the growth of the idea that the Constitution is the direct legislative act of the people, and that as such it must of course control any acts of their agents, the Legislature; for on this point rests the tremendous power exercised by the American Judiciary to declare laws unconstitutional. Of course the authority to compare this fundamental instrument with the statutes enacted by the Legislature meeting under it, can lie in the Judicial Department only.

This idea of a power over-riding the statute of the Legislature was not wholly new to the colonists. Professor Dicey, in a recent article in the *English Law Quarterly Review*, speaking to this point, says: "To any one who had inhabited a colony governed under a charter, the effect of which on the validity of a colonial law was certainly liable to be considered by the Privy Council, there was nothing startling in empowering the Judiciary to pronounce in given cases upon the constitutionality of acts passed by assemblies whose powers were limited by the Constitution, just as the authority of the colonial legislatures was limited by charter or by Act of Parliament." The origin and growth of this power is ably treated by Mr. Brooks Adams in the *Atlantic Monthly*, November, 1884.

Resistance to the Claims of the Courts.

This claim of authority was not, however, surrendered to the Courts without a struggle. In 1786, the Supreme Court of Rhode Island pronounced an act passed by the Legislature to be in conflict with the Colonial Charter which had then become the Constitution of the State. This case is peculiarly interesting as one of the first instances in which a legislative enactment was declared void on the ground of incompatibility with a State Constitution. The next Legislature refused to re-elect these Judges when their terms expired at the end of the year, and filled their places with men more in harmony with the Legislature.

In 1820 Webster made an appeal to the Massachusetts Constitutional Convention in behalf of an independent Judiciary, and in opposition to a proposed amendment whereby the Governor might remove Judges on an address from a bare majority of the Legislature. During his argument, he said that if the records of neighboring States were examined, "it might be found that cases had happened in which laws known to be at best very questionable as to their consistency with the Constitution, had been passed, and at the same session, effectual measures taken under the power of removal by address, to create a new Bench." We have no means of knowing to what State he referred, as he cited no instances; but the practice had evidently been common enough to excite his alarm, and that the Legislatures should have recourse to this indirect method of impeachment in order to maintain their authority, and even anticipate an adverse decision by removal of the obnoxious Judges, shows how reluctant they were to submit to restraint.

But the most remarkable struggle took place in Ohio in 1807, where a Circuit Judge declared a law unconstitutional, and on appeal his decision was sustained by a majority of the Supreme Court of the State. Upon this the Circuit Judge and the two members of the Supreme Court sustaining his decision were impeached by the lower house of the Legislature, and actually brought to trial for daring to declare a statute unconstitutional. They were not however convicted. The right to pronounce a law void from incompatibility with the Constitution was asserted by the Supreme Court of the United States for the first time in the great case of *Marbury* v. *Madison* in 1802. The same ground had been previously taken by the Federal Circuit Courts as early as 1797, and by the Supreme Courts of some of the States.

In the heat of great political excitement, the question has been sometimes raised, how far the decision of the Supreme Court of the United States on the constitutionality of a measure is binding as a precedent upon Congress and the

President. Jefferson, who was jealous of the claims of the Court, says in his correspondence: "My construction is that each department of the government is truly independent of the others, and has an equal right to decide for itself what is the meaning of the Constitution in the laws submitted to its action, and especially when it is to act ultimately and without appeal." He then proceeds to give examples in which he disregarded, when President, the decisions of the Judiciary, and refers to the Alien and Sedition Laws, and the case of *Marbury* v. *Madison*. Jackson made the same claim in his famous Veto Message, in even stronger language, which has already been quoted. Lincoln alluded to it in his first inaugural, referring to the Dred Scott case, which affirmed the right of the slave-holder to hold his slaves in the Territories; and during Johnson's impeachment trial his counsel, especially Mr. Evarts and Mr. Stanbery, re-asserted the doctrine in its full force. Jackson's position was opposed with great earnestness by Madison in his correspondence, and by Webster in his famous speech upon the Veto of the Bank Bill. It may safely be said that to-day the doctrine is abandoned, and is not likely ever to appear again, unless in the furnace of extreme political heat, when the passions of men warp and twist everything to their purposes.

The scope of this power to declare a law unconstitutional is much broadened by the modern tendency to limit legislation, which has already been spoken of. The early Constitutions were very brief, containing usually little more than a bill of rights and a skeleton of the government, leaving all details to the discretion of the Legislature. Now all this is changed, the bounds of the different departments are carefully defined, and the power of the Legislature is jealously curbed, particularly in the domain of special legislation. It will be seen at a glance, that this enlarges the relative power of the Courts. It limits the Legislature, and widens the field of the Judiciary at one stroke.

What, then, is the sum of our examination regarding the Judiciary? History teaches that it has grown steadily in

importance during the entire century. This change is both safe and wise; because the Courts are the weakest of the three departments; they hold neither the purse nor the sword; they have no patronage to dispense; their power is passive rather than active, and in case of resistance to their decrees, they must depend on the other departments to give them vitality. If at any time they show an inclination to abuse their power, the right of impeachment still remains, and behind that the right of removal in most of the States. There can be little danger then from this increase in the authority of the Judges; it has strengthened the weak and not the strong, and made a juster and more even balance of power between the three branches of government.

Conclusion.

We have passed in review the drift of popular opinion on these subjects, as crystallized into institutions, during a period reaching back into colonial times. In the State governments we have seen the Governor, once the august symbol of royalty, shorn of his strength and reduced to a mere shadow of power; then later still, by a reaction, endowed again with much of his original authority. We have seen the Legislature, at first weak and limited, spring, at one bound, under the stimulus of a revolt against royal oppression, almost into the omnipotence of a British Parliament; then afterwards, gradually stripped of its greatness, cramped and fettered in its movements by a revulsion of popular sentiment, which singularly enough shows a greater distrust of the legislators, the popular body, than of either Governor or Judges. And last of all, the authority of the Judiciary, both Federal and State, has constantly increased throughout the century. We, as Americans, do not feel its influence, for we are used to it from childhood, but the foreigner who comes fresh to the study of our institutions, is amazed at its extent, and at the reverence with which our people submit to the decrees of the Courts, even the sove-

reign States bowing their heads in submission. The century has wrought marvellous changes in our country, in its breadth, in its nearness to the old world, in the character of its people, in the power of the Federal Government, and in its relation to the States; but with all these changes, the type of popular government has drawn nearer and nearer to the ideal of a perfect balance of co-ordinate powers.

Looking back over the whole field, the points that have surprised and impressed me are the distrust and consequent depression of the legislative power in the States, and the steady elevation of the Judiciary, in both State and Federal Governments. The first surprised me, for I had been told so often the voice of the people was the voice of God that such a distrust seemed at first almost like a confession of failure of popular government; but may we not more justly say it is a mark of wisdom in the people, that knowing their own passions and frailties, they guard against them by putting bits in the mouths of their own representatives? On the other hand, while doing this, they have enlarged the field of the Judges, who represent the deeper and more abiding popular sense of order and justice; that stream of feeling which flows with steady volume, deep and strong, hardly moved by those tempests of popular fury which lash the surface for a time, and then as rapidly subside. The Court is the instrument of the people no less than the Legislature; but it represents the popular sentiment in a deeper, calmer, more lasting form, and embodies their aspirations after an ideal of perfect order; the law expresses the conscience of the people.

The Courts the Conscience of the People.

Why, then, should the Judiciary so often be excepted when we speak of popular institutions? It is sometimes spoken of as though it were almost antagonistic to the people. Possibly this arises from the fact that the law is the field occupied exclusively by a separate guild of men, whom De Tocqueville

terms the only real aristocracy in America. Possibly it is because the function of the Court is so often to bring back the people from a state of excitement and fury to a calm sense of right. But whatever may be the causes of this sentiment, it has no ground in fact. The Judiciary is as really a part of the people's government as any department. The interpretation of the law represents the popular sentiment of order and justice as fully as the written statute. The Court can go no farther towards absolute right than it is sustained by popular opinion, and its decisions must represent the average public sentiment; not the froth and fury of a political campaign, but the calm, settled conviction of thinking men. If the popular conscience is quickened, the judicial interpretation, as well as the statutes, must reflect its increased sensitiveness, and it, too, becomes more liberal and humane. So that to clothe the Courts with these unusual powers indicates no distrust of democratic institutions, but rather an appeal from the passions to the better judgment, to the calm conscience of the people.

This exaltation of the Judiciary in our scheme of government should excite our patriotic pride, for it is a positive advance in the art of government. We may justly lay a bolder claim, and say it marks a higher civilization, a reverence for law itself as above the men who make the statute or those who are the instruments of its execution. In the simpler and ruder forms of government, the Executive absorbs the other powers. The despotic autocrat makes the laws, interprets, and executes them. As the world advances and the nations become more enlightened, the people claim a share in the public affairs; this idea culminates in the supremacy of the Parliament, where both Executive and Judiciary may be made and unmade at the will of the popular body. Our own country, in its brief history, has passed through both these stages. The colonial period was marked by the overshadowing power of the Executive; while at a later stage, in the heat of the Revolution, the

temper of our people would bear nothing short of the absolute supremacy of the Legislature. But the ripened fruit of our experience is this modern idea of government, which lifts up the Judiciary to an exalted and independent position, and places law, impersonal, impassive, and serene, in the innermost shrine of the temple, jealously guarded from profane intrusion.

What confidence this inspires in the wisdom and integrity of human nature, in the power of the people for self-government! A century of experience, checkered by foreign and domestic wars, with marvellous growth of power and wealth, ends in a more perfect realization of the type of popular government. A century of various trials leads to the elevation of the Judiciary, the conscience of the people, for the first time in the history of the world, to its true place as an independent, co-ordinate department of the government.

We have not fully realized our ideal. Our forms are in many respects crude; our practice under them is blurred by the imperfections belonging to human nature; but the grand plan has been outlined, and we are struggling to its attainment. Incomplete as it is, it stands in unique majesty, as the outline of perfect human government, culminating neither in the selfish will of the autocrat, nor in the turbulent ambition of a popular body,—but where the calm majesty of law crowns the great work.

APPENDIX.

TABULATED COMPARISON OF MODERN STATE CONSTITUTIONS.

The following tables are intended to show at a glance the limitations placed upon the power of the different departments of government in the various State Constitutions as now existing. They are necessarily imperfect, for my aim is only to show the salient points of difference. It would need a volume to display the amazing variety of provisions found in all the thirty-eight instruments. The tables fail to show the progress of the science of Constitution-making, because most of the early instruments have been much altered by amendments, and in the tables no discrimination is made between the originals and the amendments. Thus Vermont has recently grafted biennial sessions and an elective Judiciary upon one of the most venerable of State Constitutions (1793); and New York has lately added to that of 1846 very stringent provisions to prevent special legislation.

The provisions on this subject of special legislation were particularly difficult to classify, as there was every shade of prohibition, from that shown in Delaware and Massachusetts, where the Legislatures still have full power, to that shown in California, where such legislation is forbidden by clauses of a most sweeping character. At last, I gave up all attempt at details, and grouped the States in three classes as well as I could—those with full provisions, those with partial prohibition, and those with no provision at all, or very nearly none.

The limitations of the length of sessions are almost as difficult to classify. Seven States absolutely limit the period; thus, Louisiana provides that all legislation after a certain time shall be null and void. Four others, like Georgia, provide a term beyond which it cannot be extended, unless by a two-thirds or three-fifths vote. Virginia, in such cases, forbids an extension of more than thirty days. Missouri and Texas reduce the pay of members after a certain period. Again, five others, like California, cut off their pay entirely. New Jersey, alone, provides a fixed salary of five hundred dollars, without limitation of time.

Regarding the Judiciary, I would add that the Judges can be removed by impeachment, besides the methods mentioned in the tables, in every State, except Oregon, where there seems to be no impeachment.

It is the Louisiana Constitution of 1868 which is analyzed in the tables; with this exception, all the instruments there represented are the very latest adopted.

EXECUTIVE.

	Constitution Adopted.	Length of Term in years.	Governor's Successor in case of Vacancy.	Governor has pardoning power.*	Number required to override veto.	Governor may veto items in Appropriation Bills.	Number of days allowed after adjournment for Governor to consider Bills.	Additional Provisions. (See Explanation at foot of page).
Alabama	1875	2	Pr. Sen...	*	Majority	*	.....	
Arkansas	1874	2	Pr. Sen...	*	Majority	*	20	
California	1879	4	Lt. Gov..	*	$\frac{2}{3}$	*	10	
Colorado	1876	2	Lt. Gov..	*	$\frac{2}{3}$	*	30	
Connecticut	1818	1	Lt. Gov..	None.	Majority	.....	.....	*a*
Delaware	1831	4	Spk. Sen.	*	No Veto.	.....	.....	*b*
Florida	1868	4	Lt. Gov..	Limited	$\frac{2}{3}$	*	10	
Georgia	1868	4	Pr. Sen...	*	$\frac{2}{3}$	*	.....	
Illinois	1870	4	Lt. Gov..	*	$\frac{2}{3}$	.....	10	
Indiana	1851	4	Lt. Gov..	Limited	Majority	.....	5	*c a*
Iowa	1857	2	Lt. Gov..	*	$\frac{2}{3}$	.....	30	
Kansas	1859	2	Lt. Gov..	*	$\frac{2}{3}$	.....	.....	
Kentucky	1850	4	Lt. Gov..	Limited	Majority	.....	.....	*c*
Louisiana	1868	4	Lt. Gov..	*	$\frac{2}{3}$	.....	5	*c d*
Maine	1820	1	Lt. Gov..	*	$\frac{2}{3}$	.....	3	*e*
Maryland	1867	4	Pr. Sen...	*	$\frac{2}{3}$	.....	.....	*f*
Massachusetts	1780	1	Lt. Gov..	Limited	$\frac{2}{3}$	.....	.....	*e*
Michigan	1850	2	Lt. Gov..	*	$\frac{2}{3}$	.....	5	
Minnesota	1857	2	Lt. Gov..	*	$\frac{2}{3}$	.....	3	
Mississippi	1868	4	Lt. Gov..	*	$\frac{2}{3}$	.....	†	
Missouri	1875	4	Lt. Gov..	*	$\frac{2}{3}$	*	30	
Nebraska	1875	2	Lt. Gov..	*	$\frac{2}{3}$	*	5	
Nevada	1864	4	Lt. Gov..	Limited	$\frac{2}{3}$	.....	10	*d*
New Hampshire	1792	2	Lt. Gov..	Limited	$\frac{2}{3}$	.....	.....	*e*
New Jersey	1844	3	Lt. Gov..	Limited	Majority	*	.....	*g*
New York	1846	3	Lt. Gov..	*	$\frac{2}{3}$	*	30	
North Carolina	1876	4	Lt. Gov..	*	No Veto.	.....	.....	
Ohio	1851	2	Lt. Gov..	*	No Veto.	.....	.....	
Oregon	1857	4	Sec. State	*	$\frac{2}{3}$	.....	5	*d h*
Pennsylvania	1873	4	Lt. Gov..	Limited	$\frac{2}{3}$	*	30	
Rhode Island	1842	1	Lt. Gov..	*	No Veto.	.....	.....	
South Carolina	1868	2	Lt. Gov..	*	$\frac{2}{3}$	.....	.....	*d*
Tennessee	1870	2	Spk. Sen.	*	Majority	.....	.....	*i*
Texas	1876	2	Lt. Gov..	*	$\frac{2}{3}$	*	20	
Vermont	1793	2	Lt. Gov..	Limited	Majority	.....	.....	
Virginia	1870	4	Lt. Gov..	*	$\frac{2}{3}$	.....	.....	*e*
West Virginia	1872	4	Pr. Sen...	*	Majority	*	5	*e*
Wisconsin	1848	2	Lt. Gov..	*	$\frac{2}{3}$	.....	.....	

EXPLANATION OF REFERENCES.

(*a*) Legislature only can pardon.
(*b*) Governor not re-eligible; can be removed by two-thirds of each house of Legislature.
(*c*) Governor ineligible for 4 years from close of term.
(*d*) Bills vetoed after adjournment sent to next session of the Legislature.
(*e*) Executive Council.
(*f*) In case of death Legislature elects successor.
(*g*) Governor ineligible for three years from close of term.
(*h*) Governor eligible only 8 in 12 years.
(*i*) Governor eligible only 6 years in 8.
† 3 days of next session of Legislature.

LEGISLATURE.

	Constitution Adopted.	Length of Term in Years.		Biennial or Annual Sessions.	Restrictions upon Legislation.								
		Upper House.	Lower House.		Limitation of Session, in days.	(*a*) Special Sessions confined to subjects mentioned in call.	(*b*) Bills must be read three separate days.	(*c*) Bills must contain only one subject: expressed in title.	(*d*) Gen'l or Salary Appr'n Bills must contain nothing else.	(*e*) No Act can be amen'd by title, full text must be quoted.	(*f*) Bills must be passed by majority of members elect, voting by Ayes and Noes.	Provisions forbidding Special Legislation.
Alabama	1875	4	2	Bien.	50	*a*	*b*	*c*	*d*	*e*		Full.
Arkansas	1874	4	2	Bien.		*a*	*b*		*d*	*e*	*f*	Full.
California	1879	4	2	Bien.	60	*a*	*b*	*c*		*e*	*f*	Full.
Colorado	1876	4	2	Bien.	40	*a*	*b*	*c*	*d*	*e*	*f*	Full.
Connecticut	1818	1	1	Ann.								None.
Delaware	1831	4	2	Bien.								None.
Florida	1868	4	2	Bien.	60	*a*	*b*	*c*	*d*	*e*		Full.
Georgia	1868	4	2	Ann.	40		*b*	*c*		*e*		Partial.
Illinois	1870	4	2	Bien.			*b*	*c*	*d*	*e*	*f*	Full.
Indiana	1851	4	2	Bien.	61		*b*	*c*		*e*	*f*	Full.
Iowa	1857	4	2	Bien.				*c*			*f*	Full.
Kansas	1859	4	2	Ann.	50		*b*	*c*		*e*	*f*	Partial.
Kentucky	1850	4	2	Bien.	60		*b*	*c*				Partial.
Louisiana	1868	4	2	Ann.	60		*b*			*e*		Partial.
Maine	1820	1	1	Ann.								Partial.
Maryland	1867	4	2	Bien.	90		*b*	*c*		*e*	*f*	Full.
Massachusetts	1780	1	1	Ann.								None.
Michigan	1850	2	2	Bien.		*a*		*c*			*f*	None.
Minnesota	1857	2	1	Ann.			*b*	*c*			*f*	None.
Mississippi	1868	4	2	Ann.			*b*					Partial.
Missouri	1875	4	2	Bien.	70	*a*	*b*	*c*		*e*	*f*	Full.
Nebraska	1875	2	2	Bien.			*b*	*c*	*d*	*e*	*f*	Full.
Nevada	1864	4	2	Bien.	60	*a*	*b*	*c*		*e*	*f*	Full.
New Hampshire.	1792	2	2	Bien.						*e*		None.
New Jersey	1844	3	1	Ann.		*a*		*c*			*f*	Full.
New York	1846	2	1	Ann.				*c*		*e*	*f*	Full.
North Carolina	1876	2	2	Bien.	60							Partial.
Ohio	1851	2	2	Bien.			*b*	*c*		*e*	*f*	Partial.
Oregon	1857	4	2	Bien.	40		*b*	*c*		*e*	*f*	Full.
Pennsylvania	1873	4	2	Bien.		*a*	*b*	*c*		*e*	*f*	Full.
Rhode Island	1842	1	1	Ann.								None.
South Carolina	1868	4	2	Ann.			*b*	*c*				Partial.
Tennessee	1870	2	2	Bien.	75		*b*	*c*		*e*	*f*	Full.
Texas	1876	4	2	Bien.	60	*a*	*b*	*c*		*e*		Full.
Vermont	1793	2	2	Bien.								None.
Virginia	1870	4	2	Bien.	90		*b*	*c*		*e*		Partial.
West Virginia	1872	4	2	Bien.	45		*b*	*c*		*e*		Full.
Wisconsin	1848	2	1	Ann.				*c*				Full.

ADDITIONAL PROVISIONS.

ALABAMA.—All bills must be referred to a committee.

ARKANSAS.—No new bill can be introduced during the last three days of the session.

CALIFORNIA.—All bills must be printed. No new bill can be introduced after 50 days of session, without consent of two-thirds.

COLORADO.—All bills must be considered by a committee and printed. No new bill can be introduced after 25 days of session.

ILLINOIS.—Cumulative voting allowed for Lower House. All bills must be printed.

MARYLAND.—No new bill can be introduced during last ten days of session.

MICHIGAN.—No new bill can be introduced after 50 days of session. Two-thirds vote required to appropriate public money for private purposes.

MINNESOTA.—No bill can be passed on day of adjournment.

MISSISSIPPI.—Ayes and Noes required on all bills appropriating money.

MISSOURI.—All bills must be referred to a committee and printed.

NEBRASKA.—Continuing appropriations forbidden.

NEW YORK.—Private and local bills must contain one subject only, expressed in title.

NORTH CAROLINA.—Bills to impose taxes or contract debts must be read three separate days.

PENNSYLVANIA.—All bills must be referred to a committee and be printed.

TENNESSEE.—Two-thirds required for a quorum. Ayes and Noes required on all bills of a general character and on appropriation bills.

TEXAS.—Two-thirds required for a quorum. All bills must be referred to a committee and reported three days before adjournment.

WISCONSIN.—All bills must be printed. Private and local bills must contain but one subject, expressed in title. Bills to contract debt require a majority of members elect by Ayes and Noes.

JUDICIARY.

	Constitution Adopted.	Length of Term in Years.	By whom Chosen.	By whom Removable.	Additional Provisions. (See Explanation at foot of Page.)
Alabama	1875	6	People.	Impeachment only.	
Arkansas	1874	8	People.	(Gov'r on address two-thirds each house Legislature.)	
California	1879	12	People.	(Concurrent Vote two-thirds each house Legislature.)	*a b c*
Colorado	1876	9	People.	Impeachment only.	
Connecticut	1818	8	Legislature	As in Arkansas.	*d*
Delaware	1831	Life	Governor.	As in Arkansas.	
Florida	1868	Life	(Gov'r cons't Senate.)	Impeachment only.	
Georgia	1868	12	(Gov'r cons't Senate.)	As in Arkansas.	
Illinois	1870	9	People.	(Concurrent Vote three-quarters each house Legislature.)	
Indiana	1851	6	People.	(Joint Resolution two-thirds each house Legislature.)	
Iowa	1857	6	People.	Impeachment only.	
Kansas	1859	6	People.	As in Indiana.	
Kentucky	1850	8	People.	As in Arkansas.	
Louisiana	1868	8	(Gov'r cons't Senate.)	As in Arkansas.	
Maine	1820	4	People.	(Gov'r on address both houses of Legislature, and advice of Council.)	
Maryland	1867	15	People.	As in Arkansas.	*d*
Massachusetts	1780	Life	(Gov'r cons't Council.)	(Gov'r on address of both houses of Legislature.)	
Michigan	1850	8	People.	As in Arkansas.	*e*
Minnesota	1857	7	People.	Impeachment only.	
Mississippi	1868	9	(Gov'r cons't Senate.)	As in Arkansas.	
Missouri	1875	10	People.	As in Arkansas.	
Nebraska	1875	6	People.	(Impeachment by Legislature, Trial by District Judges.)	*a*
Nevada	1864	6	People.	As in California.	*b*
New Hampshire	1792	Life	(Gov'r cons't Council.)	As in Maine.	*d*
New Jersey	1844	7	(Gov'r cons't Senate.)	Impeachment only.	
New York	1846	14	People.	As in California.	*a d*
North Carolina	1876	8	People.	As in California.	
Ohio	1851	5	People.	As in California.	*b*
Oregon	1857	6	People.	As in Arkansas.	
Pennsylvania	1873	21	People.	As in Arkansas.	*f*
Rhode Island	1842	Life	Legislature	Maj. both houses Legislature.	
South Carolina	1868	6	Legislature	As in Arkansas.	
Tennessee	1870	8	People.	As in California.	
Texas	1876	6	People.	As in Arkansas.	
Vermont	1793	2	People.	Impeachment only.	
Virginia	1870	12	Legislature	As in Rhode Island.	
West Virginia	1872	12	People.	As in California.	
Wisconsin	1848	6	People.	As in Arkansas.	

EXPLANATION OF REFERENCES.

(*a*) Judges must not practice law.
(*b*) Ineligible during term except for judicial office.
(*c*) Must render decision in 90 days.
(*d*) Judges retired at 70 years.
(*e*) Judges ineligible, except for judicial office, during term and one year thereafter.
(*f*) Not re-eligible.

XI-XII

THE CITY OF WASHINGTON

Its Origin and Administration

JOHNS HOPKINS UNIVERSITY STUDIES
IN
HISTORICAL AND POLITICAL SCIENCE

HERBERT B. ADAMS, Editor

History is past Politics and Politics present History — *Freeman*

THIRD SERIES

XI-XII

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Its Origin and Administration

BY JOHN ADDISON PORTER

"The art of governing cities is the chief excellence of man."—*Plutarch*

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THE CITY OF WASHINGTON;

Its Origin and Administration.[1]

During the perils and uncertainties of the Revolution, Congress was frequently obliged to adjourn from place to place. One place of meeting (Philadelphia) seemed feasible under the established Confederation. But Congress fled from Philadelphia to Princeton, New Jersey, in 1783, it might almost be said at point of bayonet, not of the enemy, but of their own unpaid troops, whose insolence the authorities of the Quaker City did little to suppress.

The prolonged and bitter contentions which immediately sprang up concerning the choice of a site, did not arise because

[1] A report on the progress of this study of the City of Washington was submitted, for criticism, to the Historical Seminary of the Johns Hopkins University, May 29, 1885. Extracts from it were also read before the American Historical Society at its meeting in Saratoga, September 9, 1885. Inasmuch as this paper is intended to be suggestive rather than exhaustive, the author has preferred not to burden his pages with long quotations and detailed references. From no one of the numerous volumes on Washington has he derived such special knowledge of the subjects herein treated as to justify particular mention. In fact material for the study was chiefly obtained from local newspapers, the files of which at the capitol are, happily, very complete and of unusual interest to the student of American History and Politics. For friendly assistance in this research, cordial acknowledgments are made to Frazier Davenport Head, Ph. B., of Washington. The author also takes pleasure in mentioning the valuable suggestions received from the Editor of this Series, who first called attention, indeed, to the interest and practical bearing of the subject treated in the following pages.
—J. A. P.

the importance of the future Capital was accurately forecasted by the citizens of the new states. Many intelligent men, indeed, were wholly sceptical of the chances for success of the administration. A few optimists doubtless painted the future of the Capital in glowing colors. But in the creation of it, as in other matters of public polity at that time, "provincialism, prejudice, and avarice," played important though disagreeable parts.

In those days citizens of the United States "counted their treasury-notes by the bushel." It was thought that the presence of the Capital would promote the financial prosperity of the region in which it was situated. Hence, where motives of pride or ambition failed to incline the people to harbor the government, the eagerness of the people to reimburse themselves for the losses and poverty occasioned by the late war tended to the same result.

The list of a score or more places which were "named for the honor" (some of them in the merely complimentary sense in which "favorite sons" of states are now-a-days named for the Presidency) is chiefly remarkable for the number of insignificant names which it contains. New York, Philadelphia and Baltimore were indeed there. But there were others then unknown to fame and which it is now not easy to find upon the map. Whatever errors Congress committed, the patriotic reader may be profoundly thankful for some things which they did *not* do in the location of a Capital.

During the seven years when the subject was under serious discussion, *i. e.*, between 1783 and 1790, the states of New York, Pennsylvania, Virginia, Maryland, and New Jersey, were actively represented in the competition. Memorials were received from the legislatures of New Jersey and Pennsylvania favoring some position on the banks of the Delaware. Afterwards the Susquehanna was hotly urged in place of the Potomac, named at an early date by the Virginians. Trenton and Annapolis, which had been tried and liked by the Continental Congress, were formally offered, and as quickly refused.

Maryland, in 1778, and Virginia, in 1779, generously agreed, through their representatives in Congress, to cede *any* district ten miles square within their borders which Congress might desire to occupy as the permanent seat of government. Virginia asked the co-operation of Maryland in inducing Congress to accept the grant and pledged herself to furnish a sum not to exceed $120,000 for the public buildings, provided Maryland would raise at least two-fifths of that amount. Through the early debates of Congress on this subject, there was an evident concurrence that the state or city which received the Capital should do *something* to promote its prosperity. Thus, Monroe moved that Maryland and Virginia should pay for the first government buildings, if Georgetown was chosen; Pennsylvania and Maryland were to guarantee the clear navigation of the Susquehanna, in case the latter region should be preferred; Delaware and Maryland were, likewise, to open a water communication between the Chesapeake and the Delaware. New York and Philadelphia offered their public buildings for the accommodation of the government, and Baltimore started a subscription for new ones, payable if the government came there.

The special reason for the offer of the states of Virginia and Maryland to cede some of their land to Congress, was that in the Constitutional Convention of 1787, it had been moved by Madison, without opposition, that Congress should have *exclusive* jurisdiction over the proposed district (not exceeding ten miles square) to be used as the permanent seat of the federal government. The clause to this effect, slightly modified in form, is now a part of the Constitution of the United States. The drift of opinion was plainly against the selection of a State Capital or a large city, for fear that local laws or customs might tend to interfere with some of the proper prerogatives of Congress, in administering the affairs of the Capital. A central position, accessibility, and agreeable surroundings, were, besides the requisite *freedom*, frequently and cheerfully admitted to be the conditions of a

satisfactory choice, though any proposal to reduce the theory to a practical test occasioned the liveliest and most bitter debate.

The attractive country near Philadelphia seemed to fulfil these requirements. On the 27th of September, 1789, a motion to place the Capital in a district ten miles square, at Germantown, Pennsylvania, passed both Houses of Congress, and was finally lost only because the Senate adjourned before having time to consider a slight amendment which the Representatives had offered to the original bill. At the busy session in the Spring of the following year, at New York, the complexion and temper of both Houses were considerably altered, and the choice, which the Pennsylvanians had reason to expect, was lost to them forever.

In the final choice of the apparently least eligible (Potomac) site, Hamilton and Jefferson seem to have had a considerable share. By a neat stroke of "practical politics," they exchanged enough votes between the supporters of the Funding Bill (for the assumption of the state war debts by the government) and the advocates of the Potomac site, to insure the passage of each bill. The Funding Bill had been cordially welcomed by the creditor states of the North and as bitterly opposed by the debtor states of the South. Being the keynote of Hamilton's financial system, the adoption of this measure was a *sine qua non* with him. The vote of Pennsylvania was indispensable to the passage of the bill. But the Pennsylvanians were touchy and expectant, because Germantown had so narrowly escaped being chosen Capital, and was still among the possibilities. A very delicate stroke was required to win the day; but there were master hands to make it. The Pennsylvanians were mollified by the insertion of a clause in the Senate bill of May 2, 1790, making Philadelphia the Capital till 1800.

The truce was struck and the bargain completed over fine punch and Madeira. Jefferson gave Hamilton a dinner-party to bring together their satellites. Their scheme was successful.

It is to be noticed, however, that the State of North Carolina came into the Union just in time to cast her five votes for the Potomac site. Without these votes the efforts of Hamilton and Jefferson would very likely have proved unsuccessful in mustering the small majority (32 to 29 in the House and 14 to 12 in the Senate) by which the bill was finally made a law. It was practically a vote of the "Solid South" vs. the Middle and New England states. If the latter had combined, they could easily have won the victory. The price might have been too dear. A leading New England statesman (Fisher Ames) had declared that animosities growing out of the question might split the Union. If yielding was to be done, it was not for the South. A weighty argument, indeed, had been that Virginia with great difficulty had ratified the Constitution, and that not to recognize its "claim," would be rank injustice.

The decision of Congress, while unpopular for a while, was soon regarded with indifference. The disappointed members loudly declared that they would rather not attend the sessions than go so far. Lampooners described the spot on the Potomac as a howling, malarious wilderness. But as it was yet a paper city, the feelings of the inhabitants were not hurt. Meantime the gay and populous city of Philadelphia was temporary Capital of the United States.

The attempt to place the Capital had been marked by jealousies, disputes and delays. But the work of mapping out the city proceeded with energy and dispatch. In less than seven weeks after the thirteenth state ratified the Constitution, the Potomac site was adopted, and just six months from that date the exact point was named and the labor begun of transforming an isolated tract of farm land into a centre of legislation for half a continent.

The final Act, of July 16, 1790, accepting the grants of ten miles square from the states of Virginia and Maryland, for settling the seat of government, gave the President a quite extraordinary latitude in the choice of the site. He might

plant the city anywhere "between the Eastern Branch of the Potomac (Anacostia) and the Conogocheague," a stream which enters the Potomac at Williamsport, Maryland. This is a distance of about eighty miles. The trust, though most honorable, was not, perhaps, quite so spontaneous as it appeared. Congress was in fact tired of the disputes and delays of former Commissioners on this subject, who had been appointed to help decide on a site, but had not even entered on their duties. Washington himself was at the zenith of his popularity. So tried and true was his judgment, that any decision which he might arrive at, unhampered, would go far toward disarming hostile criticism. He was, moreover, a resident in the adjacent country, a fact which afterwards subjected him to some unjust criticisms, as having placed the Capital of the United States with an eye to enhancing the value of his private estates at Mt. Vernon.

In addition to his other qualifications he had, a few years before, explored critically, with the eye of a surveyor (which profession he had followed in his youth) the entire course of the Potomac, from mountains to tide water, in the interest of the Potomac and James River Land Improvement Companies. Great things were then expected of this effort to open up trade with the West, or the Kentucky region. But in order to facilitate the business, and to guard against possible errors on the part of one man, however able and disinterested, three Commissioners were nominated to serve under him in planning the city.

Washington acted with his invariable caution, care, and judgment in deciding such a momentous question. When encamped with Braddock's army on Observatory Hill, he had noted the beauty of the broad plateau on which the Capitol now stands. He had also commended in high terms the beautiful Monocacy County, Maryland. Later he inclined somewhat fondly to the imposing heights of Georgetown.

Travel and transportation, in those days, depended largely on water communications. In discussing the subject Congress

had ignored almost entirely a comparison of land routes. It is noticeable that the site which Washington selected, was the only one at his option with the double advantage of being at the junction of inland and tide navigation. In view of its facilities and situation, adjacent to some of the most populous and richest states, Washington thought the city was destined to become the "greatest commercial emporium" in the United States. Thus have the wonders of steam made sport of the soundest intellect.

Georgetown, Alexandria, (and Carrollsburgh, where the Arsenal now stands) were already more or less flourishing settlements, when the work of prospecting began. The hope which each cherished that the city would be nearer to itself than to its neighbors, did not add to their common fund of amicability. Washington followed his natural bent toward strict impartiality by not giving any local preference. The site which he chose was, roughly speaking, between the first two of these settlements. It was owned by a few farmers, of English descent, most of whom were prosperous. Their fields were planted in wheat, corn and tobacco. "The father of his country," like Romulus of old, paced off in person the metes and bounds of the city. At every step he was vexed by the importunities of anxious residents and grasping speculators, who sought to anticipate the public. On the 14th of January, 1791, he reported to Congress that he had fixed the confines of the District. The lines were run by the Commissioners, the corner-stone being laid, April 15, 1791, at Jones' Point, near Alexandria, in the presence of a concourse of spectators. The lines thus determined included a certain tract of land on the west side of the Potomac. This course was contemplated in the original Act and Congress accordingly (March 3, 1791) passed an amendment legalizing this slight excess of authority. More than half a century afterwards, this strip of land, which includes the city of Alexandria, was ceded back to the State of Virginia.

The principal owners of the site agreed, March 30, 1791, to convey to the government, out of their farms, all the land

which was needed for streets, avenues, and public reservations, free of cost. All the land in the city limits was placed in the hands of trustees. The owners agreed to sell all the land which was needed for public buildings and improvements, for £25 per acre. All the rest the government divided into building lots and apportioned between itself and the owners. The small lots were to be sold by the government, and out of their proceeds the large ones were to be paid for. This was an exceedingly good bargain for the government. It was lucky in having few owners to deal with and no costly buildings to demolish. In one of the large cities this might have proved a serious item. Not a penny was advanced for the land which thus came into possession of the government. It got seventeen of the choicest large plots in the city (such as the Capitol now stands on), or five hundred and forty-one acres, for thirty-six thousand dollars. The 10,136 building lots which were assigned to the government, ultimately proved to be worth eight hundred and fifty thousand dollars, though a considerable part of this sum was not accounted for by the Commissioners. Counting the public reservations and streets, the tract acquired by the government was six hundred acres in the heart of the city. The tract to-day is worth, at the lowest estimate more than fifty millions of dollars. Washington was a shrewd financier, but it is doubtful if he ever made so good a bargain as this.

The name of the city was given to it by the Commissioners, Messrs. Johnson and Carroll, of Maryland, and Stuart, of Virginia. They also decided to call the "Territory" Columbia. Major L'Enfant, the engineer selected by Jefferson to plot the city, was a native of France, had been a captain of engineers in the Revolutionary war, and was a personal friend of both Washington and Jefferson. He was talented but arrogant. Washington said he was as well qualified for the work as any man living, but that the knowledge of this fact magnified his self-esteem. L'Enfant finally quarrelled with the Commissioners, and was removed

by Washington to make room for another engineer, Andrew Ellicott, a self-educated Pennsylvania Quaker, who continued to plot the city on a liberal scale.

In planning the federal Capital of the United States, L'Enfant drew his inspiration from old-world models. Jefferson, too, had lately returned from France, bringing with him plans of various foreign capitals. The plan of Washington has been likened to that of ancient Babylon. It has also been termed "Philadelphia griddled across Versailles." Broad avenues diverging from central reservations, in the shape of circles, squares and oblongs, make, with the intersections of the parallel streets, various triangles and other irregular spaces, some of which are owned and used by individuals for building purposes, and others kept by the city for small parks. The beauty and uniqueness of the plan, affording space without waste, and symmetry without sameness, may now be seen at a glance and is too familiar for further comment. But at the time the city was laid out, the scheme was thought to be too grand and chimerical. L'Enfant, in fact, laid plans for a city of half a million inhabitants, when no American, excepting possibly Madison, had formed any adequate conception of what our growth as a nation would be. Many patriotic citizens, indeed, cherished the hope that the Capital would never be a city of any considerable size. They dreaded centralizing tendencies and monarchical pomp in office. They would have been content to have the Capital merely a temporary rendezvous for passing the laws, like an ancient *Königstuhl* on the Rhine or Neckar, a seat from which the President and Congress would adjourn as soon as their public business was transacted. That in the face of such serious obstacles Washington was the only city in the United States laid out according to a comprehensive and far-reaching plan, which, in the course of nearly a century of our marvelous growth and unequalled prosperity as a people, has needed scarcely any change, or addition, is a matter of genuine surprise as well as of hearty congratulation.

After the first influx of speculators—among whom none bought more largely or lost more heavily than Robert Morris, the "Superintendent of finance" and friend of the government during the dark days of 1781—the sale of real estate languished. Foreigners seemed to have more confidence than natives in the success of the experiment. Engraved plans of the city had been well distributed abroad; Congress passed a law allowing aliens to hold land in the city; and for a time lots brought absurdly high prices in London. But after 1794 the home trade ceased almost entirely. There were some legal difficulties in transferring real estate. One of the main reasons, however, why the city did not grow faster, was that Congress could not remove thither for a number of years.

Washington himself proposed to stimulate the sale of lots in the capital by establishing sale-agencies in the principal states and cities in the Union. The plan was finally abandoned with reluctance; another, and at that time a favorite, scheme for raising money, viz., by lottery, was subsequently adopted by the Commissioners. The failure to dispose of the government lots on advantageous terms was the more serious, as the plan had been to pay for the first public buildings by the sale of these lots.

One hundred and twenty thousand dollars was supplied by Virginia and seventy-two thousand dollars was furnished by Maryland. The sum voted by these States was necessary because Congress had failed to make the appropriation of one hundred thousand dollars to begin the government buildings, named in their first discussions on the subject. The State gifts were soon exhausted and Congress, in 1796, authorized a loan of three hundred thousand dollars, to be devoted to this purpose. But nobody was willing to supply the cash. European capitalists turned a deaf ear to the appeal to loan the money, as they had so often done before at critical junctures in American affairs. The anxious Washington was constrained once more to invoke the friendly aid of Mary-

land in behalf of the District,—its territorial offspring as well as its neighbor. The State good-naturedly loaned an additional one hundred thousand dollars, not without first obtaining the personal security of the Commissioners. The credit of the government was, indeed, at a low ebb.

Much uncertainty prevailed as to what the choicest section of the city would be. Morris was almost the only speculator who bought east of the Capitol. A few bought largely in the northwest section, now the most fashionable quarter of the city. Washington himself bought two lots near the Capitol, for which he paid about one thousand dollars. He discouraged the sale of large blocks of land to individuals, fearing that their speculations would retard the legitimate growth of the city. The Commissioners bore his advice in mind, but did not abide by the rule invariably. Several of the largest purchasers were unable to fulfil their contracts and contributed not a little to the embarrassment of the government. The prices paid for the ordinary lots averaged from fifty to seventy-five dollars per acre. Capitol Hill was expected to bring the highest figures, but the principal owner kept his terms so high that purchasers were driven in the opposite direction. The owner of the land along Pennsylvania Avenue wisely presented lots to all who would build on them and thus population and business centred there.

The evenness, height and area of the grand plateau which so nobly overlooks "Broad Potomac's azure tide," of course suggested the fitting site for the Capitol building. The Executive Mansion, or "President's Palace," as Washington styled it, was placed at a convenient distance, in what was then the country. The department buildings were scattered about the city for the avowed purpose of keeping them free from the influence of Congress, as well as for artistic effect and to afford safety from fire.

The Capitol was designed by an amateur,—Dr. William Thornton, a native of the West Indies and, like L'Enfant, a friend of Jefferson. Hallett, who claimed the honor of

drawing the original "elevation," studied under Nash, the most fashionable English house-builder of his time. "Washington liked Thornton's plan and that went far toward insuring its adoption," writes a contemporary authority. To Jefferson posterity is indebted for introducing the cotton-blossom, tobacco-leaf and other original and appropriate designs in the artistic decoration of the building.

The corner-stone of the Capitol was laid with Masonic honors, by Washington, September 18, 1793. A prize of five hundred dollars and a building-lot had been offered for the best design, and a similar offer was made in regard to the President's House. But at that time there was scarcely a professional architect of note in the United States. A liberal prize might have been offered to European architects, and even if none of their plans had been adopted *in toto*, yet the comparison of ideas would have been well worth the price. If a competent and permanent superintendent of construction could have been secured, even at a high salary, many costly blunders would have been avoided and the scandals of professional jealousies and divided responsibilities would not have discouraged Congress and retarded the progress of the work. But that was a day of small things. Men from the new and distant States were not yet in accord with each others' ideas. The government was only just beginning to be able to act with vigor. Money was high and credit was low. One of the most valuable arts of modern times,—the mobilization of capital and the employment of large forces of labor simultaneously,—was in its infancy. The appropriations for the Capitol were scanty to begin with and were made so irregularly that necessary work frequently suffered or ceased—an administrative barbarism which survives to the present day.

The cost of the old Capitol—between two and three millions—was quite large but not excessive. The new wings cost more than three times their original estimate, or between eight and nine millions. It is a cause for pride that during

the Civil war the work of enlarging and beautifying the majestic structure went calmly on. Day by day the great dome grew toward the vault of Heaven. And when the colossal statue of Freedom was placed in its proud position, it was greeted by the roar of artillery which had been summoned to Washington to save the Union.

The White House was, for some inexplicable reason, copied after an Irish nobleman's house at Dublin. The chief wonder is that it has served its purpose so long and so well. House, Senate and even Supreme Court, have long since found new and more commodious quarters. Yet notwithstanding the unrivalled growth of the nation, and lately of the city, and the multiplication of public and social duties requiring transaction at the White House, the building remains the same (except for interior decorations) as when our grandparents attended the levees of the early Presidents.

In the last year of the century, Congress moved bag and baggage to its future municipal home. What it found there did not excite any very great enthusiasm. The surface of the so-called city was covered with scrub oaks and the shrubbery which flourishes in marshy places, of which there were only too many near the Capitol. The largest avenue (Pennsylvania) was in reality a morass covered with alder bushes. Streets were an unknown luxury. The solitary sidewalk, between the Capitol and the Treasury, was improvised of chips hewn from the public buildings and the sharp fragments lacerated both the feet and the feelings of pedestrians. The Capitol, White House, Treasury, and War department buildings were in process of erection or just completed; but there were no other buildings of size or importance, not even hotels. The disgusted Members were obliged to lodge at Georgetown and to go thither by stage over very bad roads. The contrast was the more unhappy as many Members had grown attached to the comforts and refinements of Philadelphia, which at that time boasted fifty thousand inhabitants. In the end, however, this barrenness bore good

fruit. The very obvious defects before their eyes made all men, whatever their previous theories on the subject, more favorably inclined to render the city at least habitable, if not elegant. The plans which were forthwith adopted were ambitious enough to suit the most progressive—and included a grand equestrian statue of Washington; a column symbolizing history; a naval column, to commemorate the deeds of that department, which now survives in dreams rather than in reality. Details were cheap, on paper, and Congress indulged in them *ad libitum*. There were to be fifteen grand squares, assigned to as many States to improve as they saw fit. Five lofty fountains were to add beauty and health to the heart of the city. An avenue four hundred feet wide, a mile long, and bordered by a magnificent park, was to connect the Congressional gardens with the Presidential mansion. Tiber Creek, which circled the base of Capitol Hill, was to be made a water-fall, twenty feet in height by fifty feet in width, flowing from beneath the centre of the building, in three broad streams, emptying into the Grand Canal,—in those days an arm of the Potomac. And finally a magnificent national cathedral, for fasts, thanksgivings and memorial celebrations, was to shelter historical trophies and treasure the dust of the illustrious dead. All these fine ideas existed not merely in the teeming brain of some ignored enthusiast, but were specific parts of the accepted plan of work which Washington himself first submitted to Congress.

How to govern the feeble child of their creation, was a problem which puzzled Congress not a little. The District included portions of two states. Some members held that the laws of the ceding states should hold in their respective portions, *unless* contrary laws were passed for them by Congress. Other members were positive that the terms of the cession demanded government by the laws of Congress and by no other laws. The wording of the bill establishing the seat of government was, "That the operation of the laws of the state within such District shall not be affected by this

acceptance *until* the time fixed for the removal of the government thereto and *until* Congress shall otherwise by law provide." The legislature of Maryland in ratifying the cession of the District of Columbia, December 19, 1791, provided "That the jurisdiction of the laws of this State over the persons and property of individuals residing within the limits of the cession aforesaid shall not cease or determine *until* Congress shall by law provide for the government thereof, under their jurisdiction, in manner provided by the article of the constitution before recited." This was ambiguous. It *implied* that Congress would eventually remodel the legislation of the District, but left the date and the manner of its doing so wholly indefinite, even optional.

Upon one important point all factions were united, viz., that the executive head of the District should be appointed by the President of the United States, rather than elected by residents. As the appointee of the executive, the mayor, it was thought, could not fail to administer local affairs in harmony with the national administration.

Local representation in the government of the District was also a question which occasioned divisions and debates. A crude and awkward suggestion was that there should be but a single assembly, the representation from the Maryland shore exceeding the Virginia contingent in due numerical proportion as the territory and population were greater. A simpler proposition was to have an organization consisting of an upper and a lower house, with an equal representation from each side of the river. After mature deliberation, Congress decided, in 1802, to delegate the *active* administration of local affairs to the city government. By this act it by no means abandoned its final authority over the city and the District. What it did was merely to grant a reasonable scope and freedom to residents, in managing what concerned themselves more than the general government. Congress expressly reserved the right to recall any or all of these privileges, if at any time they were neglected or abused.

By the act of incorporation the city was divided into three wards, as previously it was by the Levy Court (tax assessors) of the county of Washington. The act provided for the election of two chambers, the first council being composed of seven and the second of five members, elected annually, on a general ticket. The smaller body was chosen by ballot from among the twelve. This roundabout way of assigning responsibilities was, it will be remembered, a favorite one with our forefathers as a supposed preventative against intrigue.

The first municipal election was held June 17, 1802, the mayor being appointed by the President, and in turn naming his subordinates. The Corporation was restrained by Congress from ordering tax sales for default of payment on unimproved lots. In 1804, a supplementary act was passed by Congress enlarging the power of the Corporation in some details; but the old Levy Court was prohibited from the further imposition of taxes except upon city property. This act reduced the city councils to nine members, and each branch was elected on a separate ballot, the confusion of the former method being demonstrated after even this short experience. Not long afterwards (1812) a second supplementary act was found advisable, by which the election of their mayor was conferred indirectly on the people, but his nominations of minor officials were subject to confirmation by the aldermen. This board was now organized so as to consist of two persons from each ward; the board of councilmen contained three members from each ward. The aldermen were elected for two years and the councilmen for one year. The expansion of the administrative powers of the Corporation was carried a step farther by the grant of authority from Congress to sell property for the non-payment of taxes. This act was progressive but not final; on the 15th of May, 1820, all previous enactments were superseded by the "Charter of the City of Washington," which remained in force, with but few and slight alterations, for over half a century. Under the "Charter of Washington," the Corporation exercised the powers over real

and personal property, the welfare of the citizens, and the improvement of the city, common to American municipalities of that date. In its constitution and make-up, it was probably not much in advance of the times.

The work of beautifying the city according to the original plan proceeded slowly, or rather it did not proceed. The only step actually taken for many years, was the planting, by Jefferson, of four rows of poplar trees on Pennsylvania avenue, in imitation of the famous *Unter den Linden* in Berlin. The contrast between what was promised and what was done, was so sharp as to invite ridicule. Georgetown was so muddy and Washington itself was so barren, that the former was epigrammatically described as "houses without streets" and the latter as "trees without houses." Strangers, after viewing the offices of state, were apt to inquire in perfect good faith, where the city was? Foreigners came and saw (or rather did *not* see) and jeered at what they were pleased to term the "presumption" of the young Republic in daring to palm off such a homely little town as a "capital."

The worst of it was that the soil of Washington seemed congenial to a tropical growth of unnecessary blunders and scandals. Oliver Wolcott, ex-Secretary of the Treasury, wrote, in 1800, that *five times* the necessary amount had been expended upon the improvements, without producing a satisfactory result. In 1803 a memorial was presented to Congress by the citizens, reciting that the funds provided for the present needs of the city had been shamefully and wantonly wasted. A local pamphleteer describes the affairs of the District at this date as "tottering on the verge of destruction." The people cried out that "their hands were tied;" that they were "slaves in a nation of freemen." They were disgusted at the apathy of Congress and complained bitterly at their absence of representation in that body. A hue and cry broke out to move the capital, at once, to a new site. Northern members at first, almost without exception, favored the

movement; they still felt a lively hankering for the flesh-pots of Philadelphia. After the loot of the town by the British, in 1814, the plea was entered with renewed vigor and plausibility. At that date, there were not more than seven hundred and fifty assessable persons in the District of Columbia, whose combined property was worth under two millions of dollars. Yet it had been prophesied by the sanguine, that the city would reach upwards of one hundred and fifty thousand inhabitants ere this! Patriotism finally carried the day; to be burned out by the enemy would be ignominious; and besides, capital and population had been drawn to Washington on the express understanding that Congress would remain there always.

The decision had, for a time, a beneficial effect on the fortunes of Washington; property rose in value; Georgetown ceased to be preferred as a place of residence; a glimmer of hope flickered amid the prevailing gloom, that the city would at last prove worthy of its name and its situation. But the old ghost of removal, Banquo-like, would not down! In 1846, on the retrocession of Alexandria (for alleged neglect by Congress), and still again, a quarter of a century later, on the opening up of the great West by the Pacific railroad, the scheme was still active and well supported, for removing the capital nearer to the geographical centre of the continent.

The uncertain state of the laws, as they had been left by Congress, had not only retarded the growth of the city, but led to gross abuses of justice. Even after the "Charter of Washington" was granted, the parts of the District on opposite sides of the river continued to be subject to the laws of the States to which they originally belonged. Meantime many of these laws had been abolished by the States because of their severity. For instance, the barbarisms of death for arson or petty larceny,—penalties originally in vogue in some of the States (including Maryland and Virginia),—had rapidly become obsolete. In this state of affairs many common offences were, in the District of

Columbia, allowed to go entirely unpunished, rather than to violate public opinion by fulfilling the letter of the law. Gambling and riots continued unsuppressed, for lack of police. A judicial system (including a circuit, and a criminal court) had been established in the District at an early date; but the intervals between the sessions of the higher courts were long, and the justices were limited in their authority and hampered in the exercise of such functions as were assigned to them. So litigious a spirit was thus fostered, that in 1821 no less than twelve hundred law suits between citizens of the District were waiting trial. Up to the middle of the century there was practically no insolvent law, except in regard to Corporation fines; and the usury law dated back to the reign of Queen Anne. In 1855 and 1871 commissioners were appointed by authority to simplify and codify the laws of the District of Columbia; though bringing intelligence and perseverence to the task, they left considerable reforms still to be desired, and their work was never adopted by Congress.

The most staggering burden was that the local government was never out of debt from the first to the last day of its existence; but as the years rolled on, its liabilities increased both in quality and quantity. It was, withal, a mean-spirited corporation; and is said to have been so grasping that it licensed slave-traders for a paltry sum. Whether with justice or not, remains to be seen, the old corporation was *obliged* to do considerable work on the streets. Except in this particular, however, it did next to nothing to improve the city. As late as 1837 the paving extended between the Government buildings only and was composed of primitive materials. A City Hall was not built for nearly twenty-five years and was then a shabby affair. The jail was an offensive disgrace. Long after the city was well-grown, the salary of the mayor continued at $500 per annum. Lethargy, parsimony and hopelessness, in short, characterized the old local government. Nor did the example of the general

government become more inspiriting, as Congress grew more accustomed, or indifferent, to its surroundings and devoted a more and more overwhelming portion of its time and attention to other subjects. Public scandals concerning what little was actually done for the city, did not cease with the early Commissioners. Wolcott's charges of misuse of the public monies became sadly familiar from a repetition of similar instances. One of the first official acts of the conscientious President Harrison was to appoint a committee to investigate this noisome subject.

Aroused, at last, by the existing unsightliness, Congress, in 1851, appointed a competent landscape-gardener to put in order the Presidential grounds and the Mall. But the man died within a few months of his appointment. And so the project was laid by again, for nearly a quarter of a century. Apparently, as if with the intention of lengthening the score of its delinquencies, several of the most glaring errors in the appearance of the city were committed in arrogance and ignorance by the highest officers of the government. Thus the unpardonable blunder of placing the Treasury so as to cut off all view of the Capitol from the White House, was a decree of Jackson.

As the city increased in population, the presence, in its most thickly settled portion, of the sluggish and filthy canal, became a nuisance and a breeder of disease. For years it was cursed by the people, condemned by the medical authorities, and anathematized by the press. That *twenty-seven* reports were required before the pest was abolished, is a sufficient commentary on the supineness of the local authorities.

In short, up to 1860, the Capital was in reality little better than an overgrown village. It had attained a population of nearly seventy thousand inhabitants, but the growth had been slow; Washington was repeatedly outstripped by cities which were not founded till long after it was well established. It had little wholesale business and literally no manufactures. When Congress was not in session, it collapsed like an empty

balloon. It was an extremely disagreeable place to visit, except for lobbyists, of whom it was the Paradise. The hotels were provincial in appearance and poorly kept. Great clouds of fine dust from the unpaved streets were in summer the torment of pedestrians, and the extent and quality of the mud in winter were proverbial with visitors. There were no regular grades throughout the city, and both the resident and the travelling public were at the mercy of equally poor and extortionate conveyances. Till 1862 there were no street railroads, even in the main thoroughfares. The sewerage of the entire city, high and low, was fearfully and conspicuously defective. There were no fine parks or drives, no public museums or theatres, of metropolitan size and convenience. In a word, the national capital was far inferior to many State capitals in beauty, size, reputation and the comforts of civilization. The people of the United States were tired of Washington, because it was apparently a dismal failure and beyond the prospect, if not beyond the hope, of redemption. It seemed destined, by some inscrutable decree of fate, to remain forever a hideous burlesque on the ambitious, but abortive dreams of its illustrious founders.

The change which overtook the hitherto unfortunate city, on the outbreak of the civil war, was as complete as it was unexpected. The drum and the trumpet; the sniff of gunpowder, and the tread of martial footsteps, were the signals which awoke it from lethargic slumbers. It was like Rip Van Winkle, pausing to stretch his feeble limbs and to rub his heavy eyes, as he gazed on scenes of universal activity and intense excitement. But there was a giant's work to do, or the nation would be lost. To prove worthy of a great opportunity, nay to perform a solemn duty, was now the gigantic problem before Washington. No longer was the Capital regarded with disfavor by the country at large. In an instant it riveted the attention of every patriotic citizen of the United States. Even the haughty nations of Europe looked on, not with indifference. For here the pillars of the

noble temple which had been erected to liberty and union, were apparently tottering. Here the greatest statesmen of the Republic were gathered together in solemn council, how to ward off the desperate stabs of a fraternal assassin. Here the splendid armies of the North—the bone and sinew of each loyal state—were officered and marshalled; hence they marched on campaigns which were destined to drench the plantations of the South with the richest blood in America, before the stars and stripes floated again over an undivided nation. Washington the sluggard, became, in the twinkling of an eye, Washington the warrior, whose neighborhood was a vast camp and whose very streets and houses seemed peopled with citizen-soldiery. With all this true patriotism, corruption and intrigue, recklessness and dissipation, waged unceasing and exciting conflict, in public and in private, in official circles and in life. Grave mistakes were made, but, in the main, the city served its purpose supremely well. People were no longer ashamed of it; they grew proud of it, for what it was and for what it was doing. For the first time it was really their Capital; they rejoiced at its progress and growth. And that growth was, indeed, marvelous. While from 1800 to 1860, the population had reached but 66,000, the increase of residents in the single decade between 1860 and 1870, was 56,000; during the war period the entire population averaged a quarter of a million of inhabitants; and the public expenditures, which in 1860 were $77,155,125 were in 1865, $1,906,433,331.

But on the return of peace, the subsidence of excitement, and the withdrawal of men and money, the city soon fell back into the same old ruts of indifference and sloth. It bade fair to fritter away all its new opportunities, by a culpable negligence of common enterprise and public spirit. But a taste of the new and fuller life served to make a few liberal citizens eager, at all hazards, not to allow its chance of still further development to be imperilled by any intervals of stagnation. Unfortunately for themselves, as well as for the city, their

zeal led them to the opposite and dangerous extreme; they dealt with other people's money. For this reason and in this way, during the last five years of its existence, the old Corporation ran up a debt of nearly three millions of dollars. This was done without authority of law and for work which was mostly ill-advised, fragmentary, not durable, and costly. Two millions and a half more were expended in this period on "ward-improvements." In addition to this enormous outlay, property-holders had to bear taxes for so-called "special improvements," aggregating another two millions and a half. So that the grand total for this short régime of "progress" was upwards of eight millions of dollars. This was so evidently the high road to bankruptcy, that a strong reaction against, not only individual officers of the city, but the whole system under which they existed, soon set in. No fact is truer, than that civilized men are apt to act with more energy where their purses than where their consciences are concerned. So long as the old Corporation was content to pursue a do-nothing policy, and avoided excessive debts, its clumsiness, weakness, and incompetency might be freely and even cheerfully acknowledged, no matter how visibly the city was seen to be suffering from inanition. But so soon as it committed the "unpardonable sin" (in the code municipal) of multiplying taxes so that they ground both rich and poor, its days were numbered; it was fated to fill a dishonored grave. The people turned a deaf ear to its ingenious excuses. The hiss of their indignation aroused even the dull senses of Congress. The chaos of existing affairs seemed to warrant a radical departure from previous attempts at reform. The result was that a brand-new government was struck off, like a coin from a die, by the combined talent of Congress working in consultation with local authorities. It came into being full-panoplied, like Minerva from the brain of Zeus; rejoicing in its strength, as a strong man about to run a race. By the people it was welcomed with cordiality, if not with fervor. The American has none of the *abandon* which makes the

Frenchman greet the reign of "Liberté, Égalité, Fraternité" with huzzahs of delight. But at last the clouds seemed to have rolled away; the central sun of its existence (Congress) shone more brightly than ever before on the pathway which led to success; men predicted *everything*, and really hoped for much, from the new District Government.

The opening scenes of this stirring drama, which may be entitled the Reign of the Board of Public Works, are laid in the year 1871. On the 21st of February, Congress abolished the old form of government and established the new. It consisted of a Governor, nominated by the President and confirmed by the Senate of the United States; a council of eleven members, acting in conjunction with the Delegates; and a House of Delegates, twenty-two in number, elected by the people of the District of Columbia, meeting annually at a specified date. A clause in the organic act forbade the creation of a debt by the legislative assembly, for improvements amounting to over five per cent. of the total assessed value of the real estate of the District.

Added to this corps of officers were an elected Delegate to Congress (with privileges corresponding to those of the Territorial Delegates); and Boards of Health and Public Works, placed in office by the President and Senate. The second board was really the pivot on which the new administration swung. It was composed of four persons, one of whom must be a civil engineer and elector of the city of Washington; one, a citizen of Georgetown; and one, a citizen of the District outside of these cities. The designated functions of the Board were, to take care of the streets; assess for improvements; and disburse certain appropriations made by Congress for the District. No authority was granted them to make contracts except under appropriations already voted; and all their important negotiations were to be filed in writing. Any contracts in which members of the board were found to be personally interested, either directly or indirectly, were to be declared null and void. Each year they were to submit a

detailed report of their transactions to the Governor and legislature of the District, for transmission to Congress. Their salaries were not extravagant; the men chosen being well indorsed; what little opposition there was to them came mostly from disappointed office-seekers. In a word, the experiment was a legitimate, though not a scientific one; hedged in with all reasonable safeguards against peculation or malfeasance in office; moreover, the plan was put on trial under the auspices of the dominant political party.

But before the Board of Public Works had done a stroke of work, they were involved in serious litigation, and every step of their subsequent career was bitterly and actively obstructed by a growing faction of their fellow-citizens. Nothing daunted, they persevered in their Herculean task; they even waxed in influence and strength, until their opinions and their deeds became the common property not of the Capital alone, but of the whole country.

When the old corporation expired, by limitation, on the 31st of May, 1871, comet-like, it left behind it a long train of debts and obligations. By the new government it was suspected as a thief and distrusted as an emeny. Suit was brought to restrain it from carrying on any more "improvements," or making contracts which would involve its successor. The Courts sustained the new government, on the ground that their rights began from the day of their appointment. Before entering on their own duties the Board of Public Works submitted a full and detailed plan of their proposed ways, means and ends, to the newly convened session of the Legislature. The question of grading and paving the streets and the system to be adopted in awarding the contracts received particular attention.

For many years the narrower streets in the city had been from seventy to one hundred and ten feet wide. Experience had proved that such an extreme width for all except the thoroughfares, was practically useless, while entailing a great and growing expense for keeping them in repair. The

Board, therefore, wisely recommended that only the principal avenues and streets should be retained at their present width, and that all the rest should be narrowed and "parked," according to the dimensions of the roadway, *i. e.*, the redeemed land turned into front grass plots, to be owned by the city, but cared for by the occupants of the houses. The money saved on the extra strip of road, would more than suffice to adorn the city with beautiful shade trees. This ingenious and inexpensive plan for adding at once to the economy and comfort of the city, had been recently inaugurated, but not fully perfected under the Mayor of the old corporation.

In awarding the contracts, the Board were to establish a scale of prices for which they thought the work ought to be done, a scale based on similar work performed in other cities. They were to let the contracts at these prices to "responsible" parties, under heavy bonds, thereby avoiding the danger of "straw bids." This plan was approved by President Grant; and in their subsequent trials the Board introduced evidence to show that only where it had been departed from and the contracts given to the lowest bidders had poor work and serious losses resulted. For *completing* their plans, the Board recommended the negotiation of a loan of four millions of dollars. The estimate was based on the prices already paid by the city for similar work, less a deduction of one-fifth. A saving was anticipated over the old prices because the Board would work with cash in hand, whereas the Corporation proceeded on a false and uncertain credit system, which the contractors charged for, roundly, in their accounts. The Governor of the Territory was to negotiate the loan, issuing registered coupons of fifty dollars, redeemable in coin, twenty years after date, and bearing interest semi-annually. These bonds were exempted from taxation in the Territory. The payment of interest and extinguishment of the debt were provided for by a tax not to exceed three per cent. of the assessed value of property in the two cities and the county, in proportion to

the improvements made in each. The sums thus appropriated, or any portion of them, were not to be applied to any other purpose.

Notwithstanding the magnitude of the proposed improvements, it was not expected that taxation would be increased, but rather reduced, owing to the stimulus which sound and comprehensive improvements would give real estate in all parts of the city.

"Jobbery and corruption" were especially exorcised in the first report of the Board; but, while they were still in embryo (*i. e.*, before they had begun their practical duties), charges were made that the Board were forming into a "Ring." Early in June they were obliged to stop work, not from the revelations of their critics, but from trouble with "strikers." That these men struck so soon and so obstinately for higher wages, is proof that the Board could not have been reckless in awarding their first contracts; for the successful bidders were also complaining that their expenses were heavier and their profits less, than under the old Corporation.

By the end of June the murmurs of discontent had swelled to some volume and the oppositionists ventured to hold a mass-meeting. It was a small affair, but it brought forth a large accusation, viz., that the clause of the organic law had been violated which limited the debt for improvements to five per cent. of the value of all the real estate in the District. The opposition was weakened by internal dissensions; some members were plainly "cranks"; others warranted the suspicion that they desired to serve their own ends rather than to promote the welfare of the public. Public attention had, however, been aroused and some impression had also been made on the assembly; for shortly afterward they cut down considerably the original estimates of the Board and placed new restrictions on their power. Payments for the work done under their direction were to be made by warrants on the treasury of the District and no warrant was to be drawn

unless the work done and accepted was at least ten per cent. in excess of the warrant.

But the muddy stream of opposition was still steadily rising and now flowed into legal channels. On the 24th of July (two days after Governor Cooke had successfully negotiated the four million loan at 97½ per cent., in New York) a Bill praying an injunction against the Board was filed in the Supreme Court of the District. The main ground was the creation of an excessive and unlawful debt. The answer was that the new government had been unjustly saddled with the debts of the old Corporation. If these were counted, the loan-bill was obviously contradictory to law.

The injunction was granted (August 4), the court holding that the new government was responsible for the debts of its predecessor, just as an heir might be bound by the debts of his estate. Pros and cons, legal subtleties and heated comments, on this puzzling question, were now bandied about from mouth to mouth, and did more to keep alive the smouldering embers of distrust against the Board, than the attempted "indignation meetings," which were, in reality, very tame affairs.

The assembly still stood by the Board, and a majority of the people, if they could be said to be interested in the subject at all, indorsed the position of the assembly. Half a million of dollars was voted to continue the most pressing improvements while the injunction lasted. Petitions poured in, on the unsightly and unhealthy condition of the city, owing to the recent disturbance of grades and drainage.

Nothing daunted by the bitter opposition to themselves and their plans, the Board perfected their plans for much work, in consultation with officers in the engineer corps, fixed the scale of prices for the paving contracts, and cleared the decks for action as soon as the legal obstacles should be removed.

The injunction was dissolved, the appeal coming up for argument on the 23d of October, and the constitutionality of the loan Act was sustained. The decision was, in effect, a

reversal of the decision of the inferior court; the ground being, that Congress had no right to shift debts from one debtor to another without their consent; the new government could not have either debtors or creditors, except in so far as they were created by itself; all the share or responsibility which its officers had in the affairs of the old Corporation was to see that they were wound up properly.

The loan bill was put to vote (November 22) and was ratified by the people by an overwhelming majority. Very naturally the workmen, who had been for months idle because of the injunction, the radicals who, having no property themselves, cared not a fig what became of the property of others, as also the full complement of schemers, grabbers, and "heelers," who always multiply like vermin whenever wholesale improvements are in progress in a city, all became the most enthusiastic supporters of the bill which committed the city to do the work with a rush.

Meantime, old enemies had not been idle. At the end of the year they were able to present to Congress a memorial with over six hundred signatures, giving formal reasons why the charges against the Board of Public Works should be thoroughly investigated. Not one in six of the petitioners was a property-holder. Their combined wealth represented less than four per cent. of the estimated wealth of the Territory. Nevertheless, their very grave request was granted. Something had obviously gone wrong with the new régime. The city was in a shocking condition. The winter had set in with unusual severity and the streets were in confusion and in places impassable. Demolition ruled and Restoration seemed banished for an indefinite period.

The Committee of Congress began their investigation in January, 1872. No expense was spared to make the examination thorough and conclusive. The oppositionists, few of whom were men of education and position, conducted their own case. Over two hundred witnesses were summoned to testify, many of whom were, or were supposed to be, experts

in the construction of improvements, in the leading cities of the country.

Early in the proceedings, it became manifest that the prosecution was feeling its way. Its indictment, though savage in general terms, failed in important particulars. Day by day the chief allegations crumbled to dust, when subjected to critical analysis. The prosecution failed to substantiate any one of the many counts, on which it had boasted that it would secure the conviction of the Board. Men who had sided with the prosecution at the outset, were presently convinced that the Board had been grossly maligned, or at least persecuted on hearsay evidence. The tide turned with a strong flow and on the crest of the wave was a counter petition from prominent citizens (some of whom had signed the original memorial) praying Congress to put an end immediately to incurring useless expense and ventilating unjust scandals. The Governor, in an open letter, contrasted the length of time (two months) occupied by the prosecution, with the prompt and specific denial (completed in nine days) of the Board. Then there was a chorus of angry contractors and anxious workmen, who complained that they were deprived of the work which had been assigned to them, for no other reason than that a few malcontents might air their spite at the public expense. Long before the conclusion of the trial, which ended in April, it was a foregone conclusion that the Board would be exonerated. For the time being, the principal actors in the farce were glad to slink out of sight of the public. The Board, therefore, remained as much of a mystery as ever, unimpeached in its practices, unshorn of its prerogatives, with the great bulk of its work still before it. It had received a moral victory, at the hands of the highest tribunal in the country. If honest, this could scarcely fail to have the effect of spurring its members on to additional efforts to prove the justice of the verdict, while if false, they had simply had pointed out to them just what rascalities it would be most necessary for them to conceal in the future.

The Board signalized their victory at once by the display of despotic powers. What stood in the way of their progress, was speedily made way with; the tracks of a dilatory railroad were torn up to grade a street; the canal was filled in without expenditure for any more red tape; the old market was abolished, against the remonstrances of many citizens. Not infrequently, citizens who had been absent from the city for a few days returned to find their houses perched on high embankments, without a word being said to them on the subject. A grim humor was added to the strange scene, when owners of houses, which had been rendered unsafe by this process, were summarily ordered to repair them, or they would be pulled down at their own expense. Very few residents ever got anything like adequate damages for the destruction of their property, however wholesale it had been. Prominent individuals might secure special Acts of relief, but the majority were lucky if they escaped excessive taxation for "improvements."

During the fall of 1872, the Board did their heaviest work. On what a scale they proceeded, may be judged from the fact that during the first *eighteen months* of their administration, twenty miles of side walk were laid, double that number of carriage pavement, six miles of tile sewer, seven miles of brick sewer, fourteen miles of water mains, twenty miles of gas mains, and twenty-eight miles of service pipes. Before the Board rested they laid thirty-five miles (afterwards increased to fifty miles) of more than a dozen different kinds of wood pavements, four miles of Belgian pavement, five miles of round block pavement, six miles of cobble stones, eight miles of MacAdam pavements, and nearly forty miles of graveled streets and roads, mostly in the country. They graded the streets within the city limits, made adequate and complete the sewerage system, and planted no less than twenty-five thousand shade trees, of many varieties, in different sections of the city. In short, they *created* Washington, as it is known to-day.

The effect of this vigorous policy was speedy in increasing the prosperity of the city; the bonds of the District came from twenty-five below, up to par, in one year; Congress increased their appropriations for the city to a figure which they had never approximated to before, (from $1,000 in 1870 to $4,000,000 in 1873). The local real estate transactions, which in 1870 were $4,000,000, in 1873 reached $12,000,000. Notwithstanding the severe panic of 1873, not a single business firm in Washington was obliged to suspend.

Taxes were ten per cent. less than under the old Corporation. No wonder that the masses were pleased with the energy of their representatives, and that, at the first election, the delegate in Congress, who was closely identified with the programme of the Board, was returned by an increased majority, notwithstanding a bitter opposition which had sprung up among (as the administration organs called them) "the same old gang" of injunctionists.

Just what was the cost of the transformation, is almost as difficult to determine accurately as the debt of the old Corporation. The original appropriation for the improvements was soon exhausted, and then the ingenuity of the friends of "progress" was taxed, to raise the means for completing the "comprehensive system" of improvements, which must be carried through under the supervision of the authors, or else serve as their damnation. It was a case of do or die with the Board, and they acted accordingly. Neither further injunctions nor the strictures of a hostile press deterred or terrified them. So long as they had the legal power in their hands, they ceased not to act with energy and effect.

They took some hints from the old Corporation, but these were much improved upon. One third of the cost of improvements was charged to the adjacent property. The taxes were at first low, but the next year the property was assessed at increased rates for "improvements," and the process was repeated, as often as was found necessary. The very amount of the assessments was alleged to be a proof

of the value of the improvements. A most ingenious scheme was devised in the form of a so-called "special sewer-tax," which netted $3,000,000. The city was divided, for this purpose, into five districts, the property in each being subjected to an arbitrary tax per square foot, without particular reference to value or location; if not promptly paid, certificates of lien on the property were issued. A "legal opinion" was obtained which supported the view that this was not a violation of the law limiting the amount of debt which could be created without consulting the people. When every other resource was exhausted, the Board issued "certificates of indebtedness," for $2,000,000, the plea being that their assets would still prove superior to their liabilities, if the delinquent tax payers could be made to pay and Congress would advance the funds which it owed the city. To the bitter end the Board maintained that they were not bankrupt, though there was not money enough left in the city treasury to pay the school teachers and the police. When the springs of local resources were pumped dry, the Board sought to negotiate a loan in New York, at a usurious rate. Believing that their sponsors, the United States government, could not desert them, the contractors were, of course, willing to continue their services, charging meanwhile an increased bonus in their contracts, as the credit of the District government gradually sank lower and lower. The Board at this time, having absorbed all the main functions of government, including control of the assembly, was supreme to a degree which has never been approached in any other American city. So great was the confusion of affairs, that the condition of its finances could only be vaguely guessed at. This accounts for the apparent apathy of the majority of the residents while being plunged into such an abyss of threatened ruin.

In this way the debt of the Territory was increased from $3,000,000 (in 1871) to $20,000,000 (in 1875) and of this astounding increase only the original loan of $4,000,000 was submitted to vote of the people, and this, at the time it was

voted on, was understood to include *all* the main improvements necessary for remodelling the city.

When the avenging storm broke, it came down in torrents. A second petition was forwarded to Congress praying that, in the interests of law and justice, the District government, and particularly the despots of it, the Board of Public Works, be examined at the bar of Senate and House, with a view to extinction, for mal-administration of public affairs and injuring the future prospects of the Territory. In form and substance, it was almost the exact counterpart of the former memorial; but times were changed; instead of being injured by others, the Board had injured themselves by their recklessness; the men who presented the new petition were not unknown jobbers, or hasty ignoramuses, but some of the wealthiest and most influential residents of the city, whose signatures commanded instant respect. The taxes for "special improvements" pressed heavily upon them. The legal authorities of the District decided that the taxes were legal. And so their only resource was to start a newspaper organ (it was called *The Patriot*) for exposing the Ring and to hire able counsel to appear before Congress in the arraignment of the local government. Not a few leading members of Congress had, meantime, become convinced of the dangers of the form of government then existing.

The investigation was promptly granted and an able committee was appointed to represent both the House and the Senate. The Board assumed a shrewd attitude, announcing that while perfectly innocent of the charges which had been made against them, they were entirely willing that the examination should be made as thorough and conclusive as possible. They even urged members of Congress to vote the funds needful for a complete trial. On all sides it was felt that the hour for the life and death struggle between the Titans and their adversaries had at last arrived. To facilitate the examination of the accounts on which the verdict hinged, a corps of thirty clerks was kept busily employed for a period of

some weeks, in reducing the memoranda to schedules convenient for reference. Ten thousand vouchers and over a thousand original contracts were brought to the Capitol and placed in the safe keeping of the committee, while the examination was in progress.

The whole trial is so replete with interesting and important facts, amusing incidents and weighty lessons, that one must despair of doing it full justice in scant space. Up to the very end it was a neck and neck race whether the Board would be triumphantly exonerated and retained (as almost the entire press of the city confidently predicted, to nearly the last day of the investigation); or their opponents would win a lasting meed of credit, for having deposed monsters of greed and unscrupulousness. As has so often proved the case in analogous circumstances, the truth was found to lie about mid-way between two extremes.

Some of the charges made against the Board were soon proved to be ridiculous, as, for instance, that they were sending repeaters to distant states to help in the election of Senators who were in league with the Ring; that its principal members were in the habit of holding consultations in other cities, in order that they might, with the greater thoroughness and secrecy, plot for the plundering of Washington; that members of the Board had been personally corrupted by bribes; that they had appropriated the school funds and that they had allowed contractors to use valuable machinery free of charge and even appropriate some materials without paying anything for them. On each and all of these counts, the prosecution was wholly lacking in conclusive, or even circumstantial evidence, and the introduction of such charges into their case, with the hope of exciting public opinion, was injudicious, if not unjust. The only excuse for it was, that the power and arbitrary methods of the Board made specific facts concerning them extremely difficult to get at, however firmly one might be convinced of their widespread guilt.

But, on the other hand, it was soon manifest, in the course of the trial, that a number of very startling, if not criminal

practices, could be brought home to the doors of the Board. Just how far the Board, as a whole, or its members individually, had exceeded their proper authorities, might never be proved, perhaps never was proved; but the fact that a vein of such wholesale irresponsibility, streaked all over with *suspicions* of collusion and fraud, was so soon struck, encouraged the prosecution to continue their efforts with unremitting zeal, in the hope of finding a still richer "lead." The coolness with which the prosecution abandoned one charge to take up another, gave occasion to the telling of an apt anecdote by Judge "Jere" Black, who appeared for the defense. A gentleman in western Pennsylvania, said he, once made application to a justice of the peace for a warrant to search for a turkey which he said had been stolen from him. The squire, looking over his book, could not find any form of a search-warrant for a turkey. He therefore concluded that it would be unlawful to issue one and so was obliged to refuse the gentleman his request. "But," added he politely, "I can give you a search-warrant for a pig, and while you are hunting for the pig may be you will find the turkey." For many weeks this was really the attitude of the prosecution; perhaps it was the only one possible in dealing with a strongly intrenched Ring, made so either for corrupt purposes, or because of factitious opposition. But it was a course which, for the time being, divided public opinion, caused all the muck heaps of loose scandal, personal spite and vague misstatement, to be raked over, diligently, until the casual observer got an impression of a far blacker state of affairs than really existed. The stench from these many loose "preliminary charges," which were of course eagerly caught up by the press, did much more to establish the disrepute of Washington, than any facts, beyond its immense debt, which were developed under sworn testimony. To regret that the New York papers did not find space or opportunity afterwards to retract those charges which were proved to be absolutely false and ridiculous, would be but to inveigh against one of the best-known failings of human nature.

However, the prosecution could and did prove many facts which were extremely damaging to the Board; some of their "special taxes" were shown to amount, practically, to confiscation; the profits of many contractors were excessive; certain contracts had been altered after they were signed, and the Board paid for the work at the new and increased rates; the original scheme did not contemplate paving the city with concrete, yet this radical change had been adopted without consulting the assembly. For each of these very serious inquiries, buttressed with substantial evidence, the defense had ready, however, an ingenious and often a satisfactory answer; the men who growled most about their taxes would not sell their property, when offered the same or higher figures than the Board had put upon it; some contractors went away with their pockets full, but others left Washington in disgust, declaring that there was no money to be made on the terms which the Board were offering to all of the contractors; no contracts had been amended except on the advice of the highest legal representative of the District, and then only for the purpose of facilitating work and really promoting the interests of the city, and not to help the contractors; the decision in favor of concrete was rendered by engineers of the United States government, while the assembly was not in session, and to wait for it to convene would only have caused the city an expensive and useless delay. The members of the Board were previously all men of good character, and not a single instance could be authenticated in which they had entered into corrupt negotiations, either with the assembly or any one of the contractors; if the assembly became pitiably subservient to them, because of their unprecedented power, they were, perhaps, more sinned against than sinning; while no bribes were accepted by them, it was not because there were no men at hand who made more or less direct efforts to bribe them; if no formal "pool" existed to buy up real estate in the sections of the city which the Board determined to improve, yet it was undoubtedly true that many of

their friends, somehow or other, knew, in advance, where the most extensive improvements would be made and hence were able to realize handsome speculations on little or no capital.

The most impressive fact which was developed concerning the Board, was its enormous and increasing power, a power which finally enabled them to make or mar the fortunes of whole sections of the city by a single stroke of the pen, which left the property of every individual wholly at their mercy, which had under its absolute control an army of hundreds and occasionally thousands of workmen; a power which, as the pressure of their work increased, was frequently exercised by individual members of the Board in sheer desperation, without consulting their colleagues, which had only to be used fraudulently, and millions upon millions of dollars might have been poured down the throats of the greedy sharks, in the form of the school of professional lobbyists, hired agents and "attorneys," dishonest contractors and schemers, who swarmed just *outside* the office of the Board of Public Works.

Paradoxical as the assertion seems, it is doubtful if Washington could have been transformed to its present condition under any other system, or at least by one which did not resemble this in many important features. The problem of re-creating the city was a gigantic, a wholly unprecedented one. The more it was studied into and brooded over, the more overwhelming were the difficulties in the way of its attainment sure to appear. Were the process attempted by the ordinary methods in use in other cities, the result would surely have proved a failure; there would have been divisions and delays, a loss of energy and enterprise, and very likely also a better chance for dishonest men to plan their rascalities at leisure. If men thought Washington could be reformed without immense sums being spent, often, though not dishonestly, without visible results, they were arguing in the face of the experience of other cities, many of which have run heavily into debt without realizing *any* comprehensive improvements whatsoever. Meantime the golden opportunity of making the Capital the

most attractive city on the continent, might never have returned.

What Washington needed more than anything else, what was worth more to it, at that time, than economy or system, or correctness of detail, was a master mind, to take its destiny firmly in hand and mould it to his individual will; to map out enough work to keep several generations busily at work, even if they did so unwillingly; to sweep away with a ruthless hand delays, obstructions, and the favoring of individuals at the expense of the public good; to plan the improvements on the most modern and liberal scale, and to *trust* that the city would grow up to them. Such a master mind was found in Alexander R. Shepherd, Vice-President of the Board of Public Works, and afterwards Governor of the District. Self-made, but not illiterate; a plumber by trade, but intimately acquainted with every inch of Washington from long residence and successful speculations in real estate; of indomitable perseverance, and more than ordinary executive ability; naturally a leader of men—this man brought many of the most rare and valuable qualifications of success to the office which he held as the real dictator of the District government. His hobby had been the development of the city; on its prosperity he had staked his entire property. Is it to be wondered at, then, that when the magnificent opportunity was unexpectedly granted him of putting his original theories to the practical test, he used them to the full? that carried away by the success of the first outlays, in drawing both capital and population to the city and also stimulating the home market, he thought the reforms could not be *too* comprehensive or *too* continuous?

But Shepherd was no mere spendthrift, who blundered unwittingly on the right course. Many of his plans showed a positive genius for municipal administration, rare in any country, and rarest of all in this country. His foresight in narrowing many of the ways which were showy, but useless and extravagant; his transformation of the sewerage system

from the worst to the best in the country; his insisting (notwithstanding vigorous adverse pressure) on giving the city even grades for the streets; and the adoption of concrete for the roads, instead of Belgian pavements, which were savagely championed by his opponents; all these measures have long been triumphantly vindicated from the severe criticism with which they were then assailed. Indeed, had the surface grades been retained, as the exasperated householders then so loudly demanded; and had the entire city been paved with Belgian blocks, on the recommendation of many experienced men, it is easy to see that the attractions of Washington, for a residence city, would have been much lessened and its growth thereby retarded, at a cost to itself of millions of dollars. So much must be said in justice to a man who was assailed for years with vindictive bitterness; who was driven from office in disgrace and virtually ostracised from the city which he had done more than any other one man, to make beautiful and prosperous; who got no credit for his successes and only curses for his failures, even when, as in the case of some roads, those failures arose more from legitimate experiments with new materials, than culpable negligence on his part; and who, though not a dishonest dollar was discovered to bear witness against him, is probably regarded by the majority of his countrymen as a second Tweed. Though selling out his interest in all paving companies before accepting a position on the Board of Public Works, Shepherd, on being taunted with the failure of a certain contractor to make an honest pavement, replied that he would like to have the case tried in Court to show that no man would have dared to approach him with a proposition to cheat the city. His was not, certainly, the attitude of a cormorant greedy to fatten at the public expense. So, too, was Baron Haussmann vilified while his improvements of Paris were in progress; and so, too, though in a less degree, Sir Christopher Wren was abused so long as he served in a public capacity.

The opportunity which Congress had failed to grasp was a really great and very rare one, of taking a grand step for-

ward in the science of government. The crying evil of all large cities is the injustice of the universal suffrage in reference to taxation; the havoc which ignorance and jealousy are apt to make in dealing with property which they have had no share in accumulating. How great the temptation is to rush recklessly into all sorts of extravagances, when other people will have to foot the bills, has already been seen in the case of Washington; parallel cases, where legislation has been expressly framed to benefit the many at the expense of the few, would not be wanting in the history of many other American cities.

Now Congress had only to say the word, and all this injustice would have been swept away at a single stroke; the chief obstacle to reform in other cities—inducing the masses, or the representatives of the masses, to consent to any abridgment of their privileges, however iniquitous they are known to be—would have had no weight here. For nothing could be clearer, from a study of the founding of the Capital, than that Congress had a perfect right to impose *any* form of government on the District which they might prefer, even though this should prove to be virtually a despotism.

But instead of creating a property qualification in the ballot and making all residents voters, a change for which there would have been sound precedent, both in ancient and in modern times, Congress was content to hide a false diagnosis of the case, under cover of a high sounding prescription. As if a new name would serve as a talisman to increase its resources, they called the District, a Territory. Without endowing the chief municipal officer with the powers which mayors in all our large cities are so much in need of to-day, Congress sought to atone for the omission by pretending that he was really a Governor; a Common Council was constituted a legislative assembly; ordinances were misnamed laws; the ability to remit petty fines, was misquoted as the "pardoning power." To be sure, many theoretical "checks" between the various functions of the local government were

alluded to, with almost as much confidence as they used to be by statesmen of the last century, as constituting a panacea against possible dangers. Thus the Governor could not appoint members of the Board of Public Works; the Board could not raise money except by vote of the assembly; a part of the assembly was appointed by the President, and a part was elected by the people. But all these pretty abstractions proved to be, in time of need, but ropes of sand; the local government, at its worst, was nothing more or less than a one-man power, with a divided rabble at his back. The rank absurdity of the whole system appeared, when it was realized that the Chief Justice of the United States was powerless, if he was a non-resident, to defend his property in the city of Washington by so much as his single vote against what he might believe to be the dishonest machinations of a Ring, while the laborer employed by the Board to dig in the sewer in front of his house, would claim his right of citizenship *and a ballot!* The city might plunge still further into bankruptcy, but the laborer would doubtless smoke his pipe with the utmost unconcern, so long as the contractor assured him his dollar and a half a day. This is Democracy, with a vengeance!

Congress had no other course open to it than to abolish the unfortunate District government, just as soon as it could, after the committee of investigation had closed their labors. Whether justly or unjustly, wisely or foolishly, the people of the District were pumped dry; they needed time to recuperate and to pick up courage to meet the further burdens and responsibilities which had been engrafted on them by the late form of government. Congress itself was puzzled again, as it had so often been before, to know what to do with its unruly child. So announcement was made that the new trial would be "provisional," which in 1878 was ratified as "permanent" unless afterwards amended.

The power is now lodged in the hands of a board of three Commissioners—two civilians, appointed by the President and

confirmed by the Senate of the United States, and an engineer officer, detailed from the army. All the numerous subordinates are appointed by the Commissioners. The engineer is allowed two assistants, also detailed from the engineer corps of the army, one of whom is in charge of the streets and the other of the sewers. Virtually the engineers control all money for street improvements, as they make out the estimates for the Commissioners, who forward them to the Secretary of the Treasury, for transmission to Congress and incorporation in the appropriation bills. Congress pays half the taxes. The salaries of all officers appointed by the President are paid by the United States; all others, by the District of Columbia.

In some respects this system is admirable, in others it is wofully and obviously defective. The minor functions of municipal life are discharged with a celerity unapproached in any other American city. If a nuisance is defacing the appearance or threatening the health of the city, or violation of the local ordinances is being committed by unscrupulous men, there need be and probably will be no useless delays of forms and ceremonies, to vex the spirit of justice; the victim will very likely be in the clutches of the law before he has time to know that he is in danger and, like the cuttle-fish, throw out his defenses. The appearance of the city is probably better cared for under the Commissioners, than it would be if opportunity were granted for factions and alliances to be mustered against the present regulations concerning the care of the streets and the erection of buildings, which, while they are stringent, undoubtedly conduce to the charm of the city. Then, under the Commissioners, the idea of making the progress of Washington *continuous* is never wholly lost sight of, whereas in other places periods of extraordinary vigor are often followed by long lapses of total idleness and quick decay. The funds of the District are safe, because managed by the Treasury Department of the United States.

But in other and more important particulars, the present system in vogue at Washington is radically and lamentably

defective; the Commissioners and engineers need not be residents, and hence may have but a languid interest in the prosperity of the city; higher salaries are paid to the officials than would probably be voted by the people; taxation for improvements (however well planned) which they have no share in directing must always remain galling to the pride of free-born American citizens, as, likewise, their inability to cast a vote for the President or any other officer of the United States; they have no voice in the election of even the local non-political officers, such as school trustees or constables; they are not allowed a voice in Congress, which is open to delegates from the Territory of Utah—alien in its defiance of the moral and legislative laws recognized by the Constitution. The District has not been granted an acre of school lands, while the other states and some of the territories have received them to the value of hundreds of thousands of dollars, yet it is compelled, by the compulsory education law (passed by Congress) and by the fact that a third of its population is colored, and that many government officials (including members of Congress) send their children to the public schools, to support a school system of almost unequalled costliness; this the District does while refraining from the taxation of certain real property of the general government, which it probably has power to tax, under the "Charter of Washington."

Ultra-conservatives may argue, "Let well enough alone"; nevertheless the present government of Washington is undemocratic, unfair, unscientific, and in need of a radical reform. Congress not merely spurns the District by its indifference, but frequently gives vent to the taunt that it cannot be bothered by serving as town council for such a small affair as the District of Columbia. On the *one* day in the month when its affairs are supposed to be considered, having been previously investigated by committees, the listlessness of the House and Senate is often painfully apparent, and public-spirited citizens having in hand a plan for helping the prosperity of the city, or a plea for obtaining

redress from injustice, will speedily be made to feel what a favor it is for them to appear in a national committee room, however disinterested their motives or incontrovertible their case may be. This naturally leads to the inquiry, whether the District is the debtor of Congress, or Congress is the debtor of the District, and what ought to be the future relations existing between the two.

The money side of the question is perfectly clear and convincing; it is eminently calculated to excite the indignation of generously-minded men. Congress has played the part of a parent uniformly neglectful, often sharp and cruel toward its offspring. It exhibits the case of a father who has reproached his boy for not living on a scale befitting his birth, though never once affording him the means to do so. By and by, led away by ambition, the boy runs heavily into debt. The plea of the boy is, "You ought to help me pay my debts, for (like the father of Charles James Fox) you made me a spendthrift by your own orders." The father's answer is, "I would like to help you, but there are too many other claims on my time and attention; to be sure, I put a great deal of money into my pocket by selling off your land when you were an infant, but then, in the eye of the law, I had a perfect right to do so."

In dollars and cents the account stands thus: from 1790 to 1876, Congress expended, in round numbers, five millions of dollars on the streets, avenues, and sewers of the city; during the same period the District expended twenty millions. This disparity, great as it seems, does not tell the whole story; the work of the District authorities has been general, while the general government has been in the habit of confining its improvements to the vicinity of its own buildings. In the matter of street lamps, except about government premises, Congress has been parsimonious in the extreme; where the city has supplied thousands, Congress has given hundreds; at times literally its only contribution has been a small allowance for the maintenance of the police. The government not

only owns all the streets in fee simple (it has been so decided by several Attorneys-General) and fully half of the real estate in the city, but it has made money by occasionally closing up streets and appropriating the land and by the filling in of the old canal, which cost the Board of Public Works $120,000 and netted the United States $2,500,000 worth of land.

In the gift of statues to adorn the various parks of the city, the government has been fairly generous; but, it must be remembered that these statues, which vary widely in merit as objects of art and are worth, at most, not more than a few hundred thousand dollars, were ordered, not so much for the adornment of the city, as to commemorate the great deeds of American heroes.

Had the government been preëminently successful in the management of its own local affairs, it would be an easier task to condone its remissness towards the District of Columbia. While having invested there more than fifty millions of dollars in public buildings, our government pays nearly a quarter of a million more for office rent in private buildings, which are neither fire-proof nor convenient. Some of the rents are enormous, larger than the interest on a sum sufficient to complete all the buildings needed in a satisfactory manner. Then there is ever present, under the very eyes of the Congressmen, the pitiable scandal of the Congressional library, the finest collection of books on this continent (and one of the finest in the world), ably managed by its accomplished librarian, yet poorly housed and awkward of access, in fact tumbling about the shelves, in many portions of the building, like rubbish in a junk-shop, and in danger of disintegration and irreparable damage by fire, if decent accommodations are not soon provided. So much for the false though so-called economy of our national administrators. At long intervals spasmodic efforts are made to complete local concerns in which the honor and the comfort of the government is at stake, instead of sinking the money in some impassable river or useless harbor; but in general, one is reminded of a phil-

anthropic society busily engaged in distributing tooth-picks to the cannibals, while having neither time, thought, nor money for the care of the needy and worthy in their own parish. But there appears to be little practical good in dwelling on these general features of the case, however sufficient they may seem to stir the sympathy of a national public; they have repeatedly been made the substance of able reports to both House and Senate, by members of distinguished abilities, who had become intimately acquainted with the unjust attitude assumed by Congress. General Grant was only one of several Presidents who have used, without avail, the influence of the Executive to rectify the existing abuses of good faith and the neglect of grand opportunity; he even sent special messages to Congress on this subject, to serve as a tonic against the constitutional apathy of that body towards questions having no direct bearing on party politics.

What Washington is, notwithstanding all these drawbacks, few need be reminded to-day. It is certainly the most spacious and in many respects the most attractive city of the new world; with a street-area more than double that of Paris; with sewers which rival the Cloaca Maxima of Rome; with an unusually fine water power; a superabundant supply of pure drinking water conveyed to it over a gigantic aqueduct which has been considered one of the marvels of modern mechanical genius; adorned at intervals with works of art which serve to inspire American patriotism and pride; with architecture which is unapproached in this country for grace and variety; with rapidly growing museums, scientific bureaus and schools of literature and art; the favorite and increasing centre for all sorts of conferences and re-unions, scientific, professional and social; the natural resting place for retired government officers, especially of the army and navy; the best workshop for literary men, in nearly all branches of their profession; relying for its growth upon neither commerce nor manufactures, but holding out the inducements, to persons of limited means, of an unsurpassed environment, a salubrious

climate, cheap and bountiful markets, fair rents and taxes, and a learned and cultured society. The increase of resident population in the last five years alone has been over twenty-five thousand. During the past fifteen years the growth of Washington has been more than the *entire population* of such old and prosperous cities as Portland, Maine, Charleston, South Carolina; New Haven, Connecticut; and Sacramento, California; representing, it will be observed, each section of the country. For the same period the growth of the Capital has been *five times larger* than *the entire population* of many cities, standing in the class next to those already mentioned.

What Washington might be made by the expenditure of a suitable sum of money, and a remodelling of its present administration, is easy to predict. The best planned and the most fairly governed city in the world, typifying our national patriotism, material prosperity and also testifying affirmatively on the mooted point as to whether we can exist gregariously without being bound over hand and foot to the destroying devil of Mercantilism; with the tarred streets extended to every section of the city, instead of being confined mainly, as now, to one section; with a driving and pleasure park of ample dimensions, for which there are beautiful sites within easy access of the city; with a handsome mall between the White House and the Capitol (according to the original plan); with a private mansion for the President, leaving the White House for public receptions and executive business; with some enduring building (whether it be in the form of a cathedral, or not) for the preservation of trophies, relics and memorials of national importance (here, again, carrying out the well considered plans of the founders of the Republic); with a new library for Congress, but still more for the people of the United States,—which should be, by far, the most commodious, for in time it will probably be the largest in the world,—these are only a few of the many practical problems concerning the future of Washington, which press for settlement. Action cannot long be delayed without rendering

these matters doubly hard of accomplishment, if not impossible. In some instances the temporary expenditure of the necessary capital would soon yield a sure and handsome return to the government, in addition to helping the city. Thus, able committees have several times demonstrated that by filling in the flats along the Potomac, between Georgetown and Washington, the government could recover about four hundred acres of land, which would be worth nearly ten millions of dollars, after deductions had been made for the streets. And besides the gain in money, the health of the city and the advantages for private commerce of bringing the building frontage out to a deepened channel would be largely promoted. The whole case is one depending much more on *disposition*, than lacking means or opportunity. The gross receipts of the government, instead of amounting, as at first, to a few thousands of dollars a day, are now counted in millions. Our surplus revenue to-day may be expected to aggregrate over one hundred and fifty millions of dollars a year. Under these conditions, the expenditure of a few millions of dollars in a decade, on the permanent improvement of the national Capital, becomes not some pretty, foolish dream, but a legitimate study for men endowed with the boasted practicality of the age. Examples to profit by are before us. France was not afraid to spend fifteen millions of dollars on a single avenue in Paris, and was rewarded by seeing the city grow in population, in consequence of the improvements, at the rate of *sixty thousand*, instead of *six thousand* per year.

What the future of Washington *will be*, is not so easy to predict. That it will continue to grow at a rapid rate for a number of years, is beyond doubt; it has been too well advertised recently and possesses too many advantages from the improvements already made not to be sure of this temporary prosperity. But it must not be supposed that its pathway is a perfectly straight and easy one. It is threatened with a debt of over twenty-one millions of dollars, which fact need not to be emphasized further than to remark, in passing,

that "it is double that of any other municipality in the country, if not in the world. The debt of New York, with all her wealth and commerce, is but four times as much. It is four and half times as much per capita as that of Virginia, which that great State with all her resources says she cannot and ought not to pay. Only three States have as large a debt." Slow progress is being made toward the extinguishment of this unparalleled indebtedness, even if the burdens of the city are in no degree increased. The amount which the United States appropriates annually for the District of Columbia is so nearly consumed by paying the interest and adding to the sinking fund, and by the current expenses of civil administration, that little or nothing is left for the extensive improvements, already mapped out, and which must soon be made, if George Bancroft's prediction is fulfilled and the city shall shelter over five hundred thousands of inhabitants before the next century has dawned. This may justly be considered by the government simply as providing for its own indebtedness and paying the salaries of its own officers, while meantime managing to escape all taxation on its real estate, which is equal already to half that in the city and is constantly increasing in value. The taxes ($1.50 per $100 on both real and personal property, assessed at the full value) are fair at present; but if Congress should, owing to increasing cost in administering the local government, or for any other reason, mistakenly exercise its prerogative of raising the rate, the result cannot but be disastrous to the prosperity of the city, in checking the influx of sensitive capital and discouraging the migration of numbers of families of limited means who, as well as the richer and fashionable class, are now turning to the national Capital as affording privileges which they cannot find elsewhere.

If Congress should assume the bonded indebtedness of the District and thenceforth devote a regular portion of its surplus revenue to improving the city in the manner best calculated to make it a model residence city, for all classes of

useful citizens, it would be doing no more than is equitable and wise; for the citizens themselves have expended more than the present debt on improvements, while meantime subject to extraordinary current expenses by the nature of the Capital, the presence and attitude of Congress. Washington could give the country the model of a city perfectly administered according to the most enlightened statesmanship which the nation at present affords. The example could not fail to be worth much financially to the country at large, without reckoning that each section of the country would be patriotic enough to welcome indirect taxation to an imperceptible additional amount for the completion of a magnificent Capital, owned by all, a Capital in whose lustre and advantages all would share equally.

Having devoted more space than was, perhaps, necessary to dwelling on the *possibilities* of Washington, it remains only to add that reforms in its management will come slowly if we rely upon vague good will or a general impression and careless admission that things are not what they ought to be at the fountain head of our great and growing government. What is needed is critical, unimpassioned study of the question, in all its branches, such as the best modern scholarship can supply; but, more than all, the future of Washington is waiting for personal and unflinching championship of its cause by some statesman or statesmen of unblemished reputation, of commanding influence and abilities. Staunch friends it has had, —Southard, Sumner, Grant, Thurman, Allison, Blackburn, and Morrill; but no one has thought worth while to make the development of the Capital one of the main and enduring issues of his public life. Without these conditions the existing inertia cannot be overcome; lacking this intrepid and tenacious leadership, timid members will fear that a new experiment in local government might prove still more costly and disastrous than the last; in short, the hour awaits the man, and until he comes, the Capital must remain partially under a cloud.

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IN

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Adams, Herbert Baxter
Maryland's influence upon land cessions to the United States

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